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In

In the Supreme Court of Canada.

A P P E A L

From the Supreme Court of Nova Scotia.

In the matter of the Proof in Solemn Form of Law of the Instrument bearing date on the 15th day of November, A.D., 1875, purporting to be the Last Will and Testament of Beamish Murdoch, &c., deceased.

CHARLES BEAMISH, ET. AL, *APPELLANTS.*

AND

H. A. N. KAULBACK, ET. AL., *RESPONDENTS.*

SAMUEL G. RIGBY, Q. C., *Attorney of Appellants.*

W. F. MACCOY, Q. C., *Attorney of Respondents.*

HALIFAX, N. S. :
PRINTED BY WILLIAM MACNAB, 12 PRINCE STREET.
1879.

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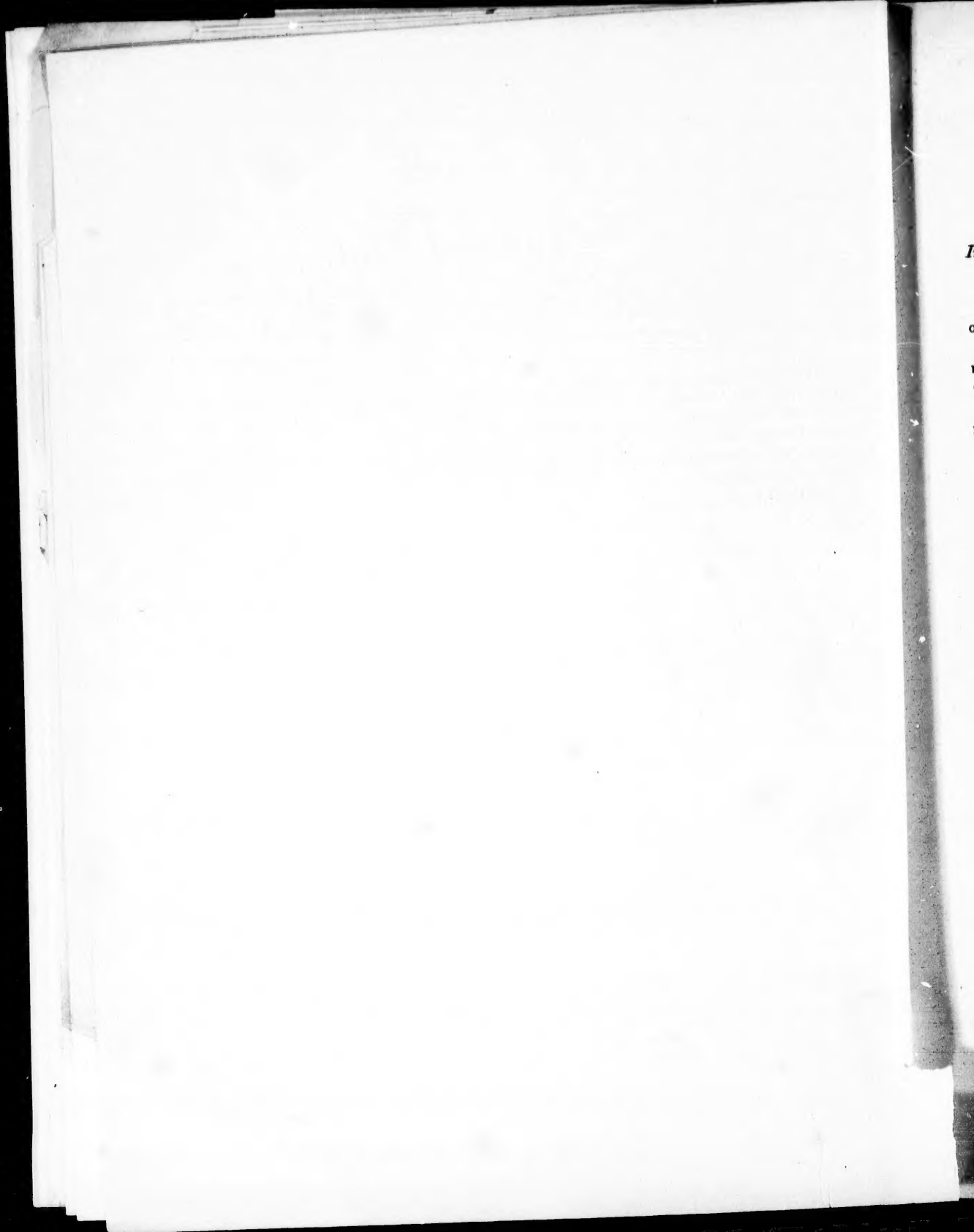
In the Supreme Court.

In the matter of the Proof in Solemn Form of Law of the Instrument bearing date on the fifteenth day of November in the year of our Lord one thousand eight hundred and seventy-five, purporting to be the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg and Province of Nova Scotia, Queen's Counsel, Doctor of Civil Law, &c., deceased.

It is agreed that the papers, documents and evidence used before the Supreme Court of Nova Scotia, from page 3 to page 190 herein inclusive, together with the opinions of the Judges of said Court, the Rule dismissing the appeal, and the orders extending time for appeal and granting appeal to the Supreme Court of Canada, the Receipt for deposit for security for costs, shall constitute the case for the Supreme Court of Canada, pursuant to the Statute and the Rules of the Supreme Court of Canada.

Halifax, February 14, 1879.

S. G. RIGBY,
Atty. of Appellant.
W. F. MacCOY,
Atty. of Respondent.



In the Supreme Court.

In the matter of the proof in solemn form of the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister, deceased.

THIS is the last Will and Testament of me, Beamish Murdock, of Lunenburg, in the Province of Nova Scotia, Dominion of Canada, Queen's Council, Doctor of Civil Laws, &c.

I, the said Beamish Murdock, considering the uncertainty of this mortal life, and being of sound mind and memory, do make and publish this my last Will and Testament, revoking all Wills and Codicils heretofore made by me.

First, I give and bequeath to my loved Cousin, Thomas B. Akins, D.C.L., twenty volumes of my books, should he be pleased to select the same within three months from the time of my decease. 10

I give and bequeath to Charles W. H. N. Kaulback, eldest son of Senator Kaulback, all my old coins and antique relics.

I give and bequeath to Hon. H. A. N. Kaulback, of Lunenburg, my gold watch with its appendages, in token of my esteem and friendship.

All the rest, residue and remainder of my household furniture, goods and chattels, together with my piano, I give and bequeath to Eunice Sophia Kaulback, wife of said Senator Kaulback.

I also give and bequeath to the said Eunice Sophia Kaulback, the full sum of five thousand dollars Canada Currency for her separate use and benefit during her natural life, the same to be invested by my Executors on interest,—the interest to be paid to her annually on her own personal receipt in writing from time to time without any right of interference or control therein from or by her present or any further husband, and without any charge for commissions for investing, collecting or otherwise, by my executors, and on her decease the principal sum of five thousand dollars hereby bequeathed her, with any interest thereon accruing or undrawn, I hereby will and direct it to be divided equally among her four children, Charles, Edna, Mary and Rupert Kaulback, without any charge by my Executors for anything done in relation thereto by way of commission or otherwise. 20

I give and bequeath to said Charles, Edna, Mary and Rupert Kaulback, all the rest, residue and remainder of my estate, real and personal to be equally divided among them.

I further will and direct that the said H. A. N. Kaulback, his wife and family have the free and uncontrolled use and occupation and benefit of my dwelling house, garden and grounds in the town of Lunenburg, which I now occupy, for three years from the time of my decease free from any rent or charges for the same, and that the said real estate be immediately sold, subject to such right of occupation as aforesaid, together with all other of my real estate of which I may die possessed, and the proceeds thereof applied towards the payment of the legacies herein mentioned. 30

Lastly, I hereby constitute and appoint the said H. A. N. Kaulback, and my friend, William H. Owen, Barrister-at-Law, of Bridgewater, to be Executors of this my Will and Testament.

In testimony whereof I hereunto set my hand and seal to these presents, this fifteenth day of November, Anno Domini (1875) one thousand eight hundred and seventy-five.

Signed, sealed, published and declared by the said)
Beamish Murdock to be his said last Will and)
Testament thus executed by him and us, in)
his presence and in the presence of each other.)

EDWARD H. SOLOMON.
JAMES H. WENTZEL.

BEAMISH MURDOCH. [L. S.]

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In the Matter of the Petition for Probate of the alleged Last Will and Testament of Beamish Murdock, late of Lunenburg, Barrister, deceased, dated the 15th November, A. D., 1875.

TO GEORGE T. SOLOMON, JUDGE OF PROBATE FOR THE COUNTY OF LUNENBURG.

I, Charles Beamish, of the City and County of Halifax, Gentleman, do hereby give you notice that I do intend to contest the above will, and I notify you not to grant Letters Testamentary to the Honorable H. A. N. Kaulback or William H. Owen, Esquire, or either of them, claiming to be the Executors of the last Will of the said Beamish Murdock, the said Beamish Murdock having on the 6th April, A. D. 1875, made a valid last Will, a copy of which I hereto annex, and for the proper Probate of which I have already petitioned you for a dedimus potestatem. 50

C. BEAMISH.

I, Beamish Murdoch, of Lunenburg, Nova Scotia, Esquire, hereby make this my last Will, hereby revoking all former wills and codicils.

I leave and bequeath three thousand dollars to my best and tried friend, my cousin Charles Beamish, of 101 Queen Street, Halifax; to his daughter, Maria Beamish, the sum of one thousand dollars; to Miss Henrietta James, his sister-in-law, one thousand dollars; to the widow Peck, my housekeeper, two hundred dollars for her attention to me in severe illness. And I leave and bequeath four thousand five hundred dollars to my said cousin, Charles Beamish, in trust, to invest the same at interest, and to pay the interest annually to Eunice Sophia Kaulback, the wife of the Honorable Senator Henry A. N. Kaulback, of Lunenburg aforesaid, on her personal receipts, for her own separate use and benefit, without any control or interference of or by her present or any future husband, and at her death to divide and pay said four thousand five hundred dollars in equal shares to and among her children then living. Further I leave my books to my cousin Thomas B. Aikins, D.C.L.; I leave my silver and copper coins to Charles Kaulback, the Senator's son, and my gold watch, to my said cousin Charles Beamish. 60

I appoint said Charles Beamish, my executor and Trustee, and empower him to sell, and turn into money, all my real and personal estate, his deed or receipt be a full discharge to purchasers from all responsibility whatever. If my estate falls short, the money legacies to abate *pro rata*. 70

Witness my hand and seal, at Halifax, N. S., 6th April, 1875.

Sgd. BEAMISH MURDOCH. [L. S.]

Witnesses present, both present together with Testator, he signing in our presence, and we in his presence, and requesting us to witness this as his Will. }

Sgd. JOSEPH BELL,
WILLIAM HOWE.

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COURT OF PROBATE,

LUNENBURG, SS.

TO THE WORSHIPFUL GEORGE T. SOLOMON, ESQUIRE, JUDGE OF PROBATE FOR THE COUNTY OF LUNENBURG.

The petition of Henrietta James, of Halifax, in the County of Halifax, Spinster, and Charles Beamish, of the same place, Gentleman, Humbly sheweth,

That Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister at Law, departed this life on the ninth day of February, A. D., 1876, last past.

That previous to his said decease, the said Beamish Murdock, on the 6th day of April, A.D. 1875, made his last Will and Testament, which has been proved in common form for probate by William Howe and Joseph Bell, of the City and County of Halifax, Esquires, witnesses thereto, which Will is now in the Probate Office in the County of Lunenburg, and to which your petitioners crave leave to refer ;

That by said last Will and Testament the said Beamish Murdock appointed your petitioner, the said Charles Beamish, sole executor and trustee, and among other legacies bequeathed to him, the said Charles Beamish, \$3,000, and to the said Henrietta James, the sister-in-law of said Charles Beamish, a legacy of one thousand dollars, as will appear by said Will ;

That a paper writing, bearing date the 15th day of November, A.D. 1875, purporting to be the last Will and Testament of the said deceased, was produced for proof and proved in common form on the 19th day of February, A.D. 1876, and is now in the Probate Office at Lunenburg ;

That by said alleged Will the Honorable Henry A. N. Kaulback, of Lunenburg, and William H. Owen, of Bridgewater, in the County of Lunenburg, Barristers, are appointed Executors, and the whole of the property of the said Beamish Murdock, real and personal, with the exception of twenty volumes of Books, conditionally left to Thomas B. Aikins, Esquire, by said Will, is left to the family of the said Honorable H. A. N. Kaulback ;

That your petitioners are informed that the said William H. Owen has declined to accept the executorship and trust under said alleged Will, and that the said Honorable H. A. N. Kaulback claims Letters of Probate and the administration of the estate of the said deceased ; and your petitioners say that at the time of the execution of said last mentioned alleged Will by said Beamish Murdock, he, the said Beamish Murdock, was not of a sound and disposing mind, and that at the said last mentioned time, and for a considerable period theretofore the mind and will of the said deceased were under the control and dominion of the said Honorable H. A. N. Kaulback, and petitioners say that at the said time the said Beamish Murdock now deceased, through the use of ardent spirits, from bodily infirmity and under undue influence, had become greatly weakened in his understanding, and his intellect was impaired and disordered, and his mind so defective, weak and obscured, that he was not in a fit and proper condition to dispose of property by last Will and Testament, and said alleged Will ought not to be recognised in law as the last Will and Testament of the said deceased ;

Your petitioners therefore pray that the said alleged last Will and Testament of the said deceased Beamish Murdock, of the date of November 15th, A. D. 1875, may be proved in solemn form of law, and that the said executors and legatees named in said Will, and all parties interested, may be cited to show cause why said Will may not be held to be invalid and the probate thereof refused, and why in the meantime are further proceedings under said Will may not be stayed.

HALIFAX, APRIL 28th, A. D., 1876.

C. BEAMISH,
HENRIETTA JAMES.

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COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof of the last Will and Testament in solemn form of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister, deceased, dated 15th November, A. D., 1875.

The examination of Edward H. Solomon, of Lunenburg, in the County aforesaid, gentleman, taken before me, George T. Solomon, Judge of the Court of Wills and Probate, and for granting Letters of Administration within the County aforesaid, this twenty-fifth day of May, A. D. 1876, who, being duly sworn, deposeth and saith :

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(Mr. Weatherbe requests on behalf of petitioners that all the witnesses, with the exception of the one sworn, be out of Court, the Judge decided that Mr. Kaulback, being an executor, should be allowed to remain and give evidence.)

I was acquainted with the late Beamish Murdock, I think, in 1873. I have had conversations with him occasionally, and only occasionally. I was called upon to make Mr. Murdock's will on the evening before the will was executed. The will was executed on the 15th November, 1875. I was called upon to prepare the will on the evening of Sunday, 14th Nov., 1875. I went to Mr. Murdock's residence on the evening of the 14th Nov., 1875. Mr. Murdock was there. When I saw him I shook hands with him. He said he wished me to engross his will. He then handed me the draft of the will. I sat down at a desk that was there and began to copy from the draft. During the copying of it he suggested an alteration after I had finished the writing. I read it to Mr. Murdock clause by clause, embracing the alterations proposed by him which I had previously inserted. I cannot swear that he consented to it clause by clause, but he assented to the writing as being correct. I read it slowly and distinctly to him. (Mr. Owen asks from what transpired between Mr. Murdock and yourself on that evening was he capable of understanding the business in which he was engaged? Mr. Weatherbe objects that it's directly leading the witness and getting his opinion as an expert. The Judge decided the question shall be admitted Answer—He was.) This is the draft of the will written by me on the evening of the 14th Nov., at Mr. Murdock's instance and request. There is no doubt of Mr. Murdock's being there ; he was sitting alongside of me close to me. After it was finished he expressed a wish then to execute. I told him I would take it down to my office in the morning, engross it, and bring it up to him and have it executed. This paper marked A is the draft of the last will and testament of Mr. Murdock, written by myself on the evening of the 14th Nov., at the request of Mr. Beamish Murdock, and read to him by myself, and assented to by him. I took the draft with me after examining short time at Mr. Murdock's and took it home with me. I took it home with me same evening. (Mr. Weatherbe objects to the examination proceeding on the ground that the full answer has not been taken down and on the ground that the witness has already stated that he took the paper home and copied it the next morning and requests the Judge to ask the witness if he has not already given that evidence. In answer to the above, and to settle the dispute, the Judge asks the question. "What did you do with the paper?" To which witness replied, "I took the paper home with me." I was in Mr. Murdock's house about two hours on the evening of the 14th Nov. Mr. Murdock was present all that time. In previously stating that I was at Mr. Murdock's a short time on that evening, I meant a short time after I prepared the draft.

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I don't remember having had any particular conversation with Mr. Murdock on that evening. After the whole writing was done, Mrs. Kaulback gave us some music. The writing was done in the library, and after that Mr. Murdock and I retired to the other room in which we had the music referred to. On this evening of the 14th November, Mr. Murdock appeared to me to be well and active, his walking was feeble. (The Judge asks the question?) Had you any conversation with Mr. Murdock after the drafting the will. Answered I don't remember any particular conversation after the draft was made. There was some general conversation in the room in which Mr. Murdock took part. But I swear his mind was calm, rational, and clear. It appeared to me to be 170 so. Mr. Owen asks the question: "Have you any doubt that such was the case." Mr. Weatherbe objects to the question as being grossly illegal. Judge decides question shall be answered. (Answer.) I have no doubt that his mind was calm, rational, and clear.

On the day following I copied the draft taken by me marked A, as filed. That paper marked B is the copy I made on the 15th day of November, 1875, at the request of Beamish Murdock, and in accordance with the arrangement I made with him the evening previously, as and for the last will and testament of Beamish Murdock. I finished writing the paper about 10.30 A. M. on said 15th November. All the writing in paper B is in my writing, with exception of signatures of James H. Wentzell and Beamish Murdock. I am acquainted with James Wentzell, and was at time of execution of that paper. I saw him on the morning of said 15th November. He came to 180 my office. He came, I think, to draw some school money.

I made the request that he would go to Mr. Murdock's with me to act as a witness to his last Will and Testament, and he accompanied me there for that purpose. We were ushered into the sitting room. Mr. Murdock, I think, was not in the room at the time, but was sent for. I don't remember who came to the door. He was sent for at my request. He put in an appearance a few minutes after we got there. This paper, marked B, I took with me for Mr. Murdock to execute as his last Will and Testament, and at his request Mr. Wentzell and I entered the sitting room of the residence of Mr. Murdock together. (Mr. Owen asks, "What took place in the sitting-room after Mr. Murdock made his appearance there, in the presence and hearing of Mr. Murdock, James Wentzell, and yourself? (Answer.) I handed him this paper marked B. He took it and laid it on the table. 190 About this time Mr. Kaulback came in and suggested its being read. A pen and ink was got then, and I took the paper. Mr. Murdock sat down near me, and Mr. Wentzell sat near me.

I read that paper, marked B, in the presence of Mr. Murdock and James Wentzell to the witness clause by clause, and in doing so he assented to every clause either by saying "That's right," or by nodding his head. I then took the paper marked B and laid it on the table. Mr. Murdock got up and approached the table. He took the pen and signed the paper marked B, as you see it thereon. The witness, James Wentzell, and I were standing up looking at him at the time he was putting his signature to the paper. After Mr. Murdock had completed his signature, we (Mr. Wentzell and myself) signed it as witnesses to his signature in the presence of Beamish Murdock, and at his request, and in presence of each other. 200

With regard to my statement that shortly after going into the residence of Mr. Murdock with Mr. Wentzell, I handed the paper marked B to Mr. Murdock. I don't remember how long he had it in his possession before placing it on the table; but it was some few minutes. I don't remember whether it was in his hands long enough to read it; I can't answer. (Mr. Owen asks, Do you know anything to the contrary? Mr. Weatherbe objects. Answer—No.)

When I read over the Will to Mr. Murdock he could hear and understand it, and Mr. Wentzell, the witness, was near enough to hear and understand all that was read and said to him. I read

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all contained in paper marked B to Mr. Murdock before the execution of it. Mr. Owen asks. Is that the signature of Beamish Murdoch? and immediately, upon Mr. Weatherbe objecting, the question was withdrawn without an answer having been given.

210

The judge decided it was a proper question. Mr. Owen, having withdrawn the last question, asks the following question: "Whose signature is that to paper B?" Mr. Weatherbe objects on the ground that the witness has been illegally led by the previous question on an important point in the case. Judge decides the question a proper one. *Answer*—I positively swear that that is the signature of Beamish Murdoch. I saw him write it on the 15th November, 1875 that being date of will. The seal was attached thereto at the time of his signature. He executed it as his last will and testament in the presence of James H. Wentzell and myself. The signature—"Edward H. Solomon" is my signature, and the signature of James H. Wentzell is his genuine signature. I saw him put his name there. I executed it in presence of James H. Wentzell and Beamish Murdoch. James H. Wentzell executed it in presence of myself and Beamish Murdoch.

220

It was witnessed by myself and James H. Wentzell immediately after Beamish Murdoch affixed his signature.

Immediately after the will was executed, as aforesaid, it was put in an envelope by Mr. Murdock, I think. This envelope, marked C, is that in which it was enclosed. I wrote the endorsement "Last will and testament of Beamish Murdoch," November 15th, 1875, to be opened by H. A. N. Kaulback or William H. Owen on this envelope. The B on that envelope I did not write.

The words on the envelope were written immediately after the will was put in it, in the presence of James Wentzell and Beamish Murdoch, and it was written at the request of Mr. Murdock, I cannot positively swear whether Mr. Murdock sealed it. I am almost certain it was myself from seeing the stamp of my ring upon it. It was sealed either by myself or Mr. Murdock. If sealed by myself it was done immediately after it was endorsed. It was sealed in my presence and in that of James H. Wentzell and Mr. Murdock. I think it was left in the possession of Mr. Kaulback by Mr. Murdock.

230

Mr. Murdock died about two or three months after making his will.

After Mr. Murdock's death I first again saw the will in the safe in the office of Henry A. N. Kaulback, Senator, enclosed in this envelope marked C, which was sealed. It was taken out of the safe in the presence of the Sheriff, Edwin Kaulback, and Frank Powers. After taking the will out the safe, Mr. Edwin Kaulback and myself took it to the residence of the late Beamish Murdoch where we understood one of the executors was at the time, and I personally delivered it to W. H. Owen, one of the executors.

240

At the time I delivered it to him it was in that envelope and sealed. W. H. Owen opened the will and read it, and I think he brought it down to the Judge of Probate the same evening. I am positive W. H. Owen filed it with Judge of Probate that evening. I was with him. I couldn't say positively how long it was after Mr. Murdock's decease, but I think a short time after.

James Wentzell and I remained with Mr. Murdock a short while after the execution of the will on the same day. Mr. Wentzell and I left the house together. Mr. Murdock at that time appeared to be calm, pleasant, and self-possessed, and in fact was so. His health appeared to be pretty good. I didn't hear him complain. (Mr. Owen asks—Was he, or was he not, of sound, disposing mind and memory? Mr. Weatherbe objects on the ground of its being a distinctly leading question in the main point of the case. Judge decides the question a proper one. *Ans.*—He was to the best of my judgment, and capable of making a will. Mr. Owen asks—What further have you to state with regard to Mr. Murdock's mind and business capabilities at the time of the execution of the will? Mr. Weatherbe objects on the ground that the witness has stated nothing on

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that subject yet. The Judge allows the question. Ans.—I have nothing further to say beyond that to the best of my judgment he was capable of making a will at the time.) I don't know much about his business. I never knew much about his business.

Mr. Owen asks—Was he, or was he not, capable of transacting the business in connection with his will on the day of the execution thereof? Ans.—He was capable to the best of my judgment, and was calm, and free from excitement.

Mr. Weatherbe objects to this evidence.

260

I can't remember whether on the morning of the execution of the will by Mr. Murdock, he made any reference to Mr. Beamish or his relations in Halifax.

The Judge decides that Mr. Owen shall, in the first instance, merely make out a *prima facie* case by the subscribing witnesses relative to the making and execution of the will.

Mr. Weatherbe objects to this decision on the ground that this decision was made by His Worship on application of Mr. Owen, prematurely, and that the opinions should have been sought from counsel. 2nd, that the Respondents should take the responsibility of deciding upon what course to pursue. 3rd, that the application of Mr. Owen to the Judge, binds the Judge to a decision of law before an argument has taken place. 4th, that the application and decision are premature, and before Mr. Owen has announced he has finished with his first witness, and Mr. Weatherbe gives notice that he will object to the re-calling of witnesses to give evidence which should have been produced in the first instance. 270

Mr. Owen states that he offered to argue the question before the Judge gave his decision, which Mr. Weatherbe declined doing.

Mr. Weatherbe states that he does not know what question Mr. Owen refers to, and that Mr. Owen declines telling him what question it is.

Mr. Owen dispenses with the further testimony of Mr. Edward Solomon, the witness for the present, with the intention of re-calling him.

Mr. Weatherbe states that if Mr. Owen has any further evidence to get from this witness, he should go on. That the times for arguing the rebutting testimony is after the petitioner closes his case. 280

Cross-examined by Mr. Weatherbe.—I went on the evening of Sunday, 14th November, to Mr. Murdock's. He shook hands the first thing. Next he said he wanted me to engross his will. He then immediately handed me the draft of the will, and I immediately commenced to engross it. The draft of the will is marked A. Mr. Kaulback was there. I know his handwriting in connection with the document. I don't remember that he wrote anything while I was there. I won't swear that he didn't write anything. Mr. Kaulback's writing was in the draft of the will.

I was in that house about 2 hours on that Sunday evening. I was not all the time at work. I have been paid for that work. Mr. Murdock was calm, rational and clear, (Mr. Weatherbe asks Do you think that last answer a reply to my enquiry as to Mr. Murdock's state of health? (Answer) 290 He was in a fair state of health at the time.

I was paid five dollars for that work, Mr. Kaulback asked me to go there on Sunday. He asked me after service in the Church on that day, (Mr. Weatherbe asks, Did he tell you at the time that Mr. Murdock was very ill? Mr. Owen objects to the question on the grounds that statements made by Mr. Kaulback at the time referred to are not evidence and that Mr. Weatherbe put the words into the Witnesses mouth). Witness answers—I have no recollection of his having done so.

Mr. Murdock paid me the money after the will was executed. There was no one present. I do not know from whom he got it. I didn't wish to take it, but he forced it upon me. It was in the hall, and the sitting-room and library doors were open. It was a short time before I left.

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He wished to pay me and went out of the library to get the money, and called me out into the 300 hall to pay me. James Wentzell was in the sitting-room with me when he called me out. I don't remember where Mr. Kaulback was. I didn't see Mr. Kaulback when the will was executed. Mr. Kaulback passed through the room and suggested the will being read while I was there to execute it. He passed through into his bed-room—the adjoining room. I don't know how long he remained there. I couldn't say whether it was an hour. I didn't take particular notice at the time. My attention was confined to Mr. Murdock and the execution of the will exclusively. I can't remember how long Mr. Kaulback was in either room or what portion of the time of my interview.

Mr. Murdock, Mr. Wentzell and myself were present. I could not say whether any one else was present. It was at evening service Mr. Kaulback asked me to go up. I walked up with him.

Mr. Kaulback told me Mr. Murdock wished to see me, and at first I declined going as it 310 was Sunday evening. He urged me to go up that Mr. Murdock wanted to see me particularly. I told Mr. K. I didn't care about going up as it was Sunday evening. He said Mr. Murdock wanted to see me particularly. I can't remember any further conversation.

I don't remember that he told me the matter was very urgent. I don't remember that Mr. K. told me what the business was about. He may have done so, but I can't recollect. I had a great respect for Mr. Murdock and went up. I may have asked Mr. K. what it was about. I don't think I had any hint of what the business was until I got up there. It was between 8.30 and 9 P. M. in the evening when I got up there. I remained about 2 hours. Mr. Murdock was not lying down when I went in. He was sitting. I cannot remember having had anything to drink there that evening and am certain I had nothing until after the work in connection with the draft of the 320 will was done.

I went voluntarily at the work, I was not urged at all. I can't remember that Mr. Murdock touched anything that evening—meaning ardent spirits. I swear positively he touched nothing while he was in the library. He was not out of the library during the time I was there. The library is a room in which he had a number of books on shelves, and is in dimensions about 9 ft. by 12 ft. There is a kitchen off that a little longer than the library. The only other rooms on that flat are, I think, a bed room and the other a sitting-room, the latter about 10 ft. by 12. I can't say what the size of the bed-room was. It is a one story house the house in which Mr. Murdock lived previously. Mr. Kaulback, the respondent's family, were living in at the time.

I had occasionally seen him previous to that, oftener previously to execution of will than 330 after. I noticed a feebleness in his legs on that evening. He was always troubled in that way. It was nothing more than usual that evening. I noticed no extreme illness in him on that evening requiring a will to be made. I didn't observe anything more than usual. I think he was more feeble than he had previously been three years before. I did not observe him to be more feeble than a year previous. I think he was not. I saw him about a twelve month previous to that time, in the street and in church. I think I saw him within three or four months previous to execution of will. I saw Mr. Murdock in May I think or June.

He was then at work in the garden. This was in 1875. I can't say he was suffering from broken ribs at that time. He was walking about in the garden. He said nothing to me about broken ribs nor I to him. I think he was more feeble at the time will was made than when I saw him in 340 the garden. He seemed to be as lively and full of vigour as six months previous when I saw him.

He was more subdued I think when the will was made. Seemed to be quiet and calmer. (Mr Weatherbe asks was he as lively at the time will was made as six months previously? Mr. Owen objects on the ground that Mr. Weatherbe previously put the same question and received the answer thereto.) Answer—He didn't seem to be as lively. (Mr. Weatherbe asks Was he as full of vigor at

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the time will was made as six months previously. Mr. Owen objects, question having been previously asked) Answer—He appeared to be more feeble, and was not so full of vigor in my opinion. He was not so lively and full of vigor at the time will was made as six months previously, in my opinion.

Mr. Weatherbe asks—Had he become so feeble in your opinion as to require an immediate will? Answer—I cannot answer that question. In my opinion there was a necessity He was a man advanced in years and that was the reason for his making his will. I thought it was a time of life at which a man ought to make a will. I knew nothing about his business and never remember having any conversation with him with regard to any business before his making the will. Of course making his will let me know what he was doing with his property. 350

The alteration, by insertion of the words "from time to time," on 2nd page in paper marked A was made by me, at Mr. Murdock's suggestion. That is the only alteration I remember made at his suggestion. I can't remember at whose suggestion the other alterations were made. I can only remember that one suggested by Mr. Murdock. The words "Copy," "Beamish Murdock's," and James H. Wentzell and E. H. Solomon in paper A are not my writing. The whole of the paper, with the exception of the above words, is in my handwriting. I think I recognize those words, not written by me, as the handwriting of Mr. Kaulback. The paper, I think, was taken away from my office by Mr. Kaulback on the day I engrossed the will. I am pretty sure it was two or three days. I am positive it was quite near the time, and I think before the execution of the will. He did not take away the paper marked B. I had that. I can't remember what Mr. Kaulback said to me before going up to execute the will. I think there was very little said. I can't recollect the purport of any conversation when he took what I call the draft away. I use the phrase, "What I call the Draft," because when I made that paper marked A, I wrote from a draft that was handed to me by Mr. Murdock. I copied this paper marked A from a draft. I call the paper marked A a draft of the will. I copied paper A from a draft. It was on the paper I got from Mr. Murdock that I recognized Mr. Kaulback's handwriting. I called that the draft. I don't now call that paper the draft because I had made will from the copy I had taken of it. 360

When I wrote the will from the paper marked A, I considered that the draft afterwards. I called the other paper the draft in the first instance. I now call the first paper a draft, that is, the paper handed me by Mr. Murdock, in which I recognised Mr. K's handwriting. When Mr. Kaulback took paper marked A from my office the first paper was not there. I don't know what became of it. When he took paper A away, I don't remember that he said anything. He picked up the draft (paper A.)

Mr. Weatherbe asks—When Mr. Kaulback took away the paper A from your office did he state that he intended using that as the draft?

Mr. Owen objects on the ground that this question was embraced in the last general question answered by witness. 380

Mr. Weatherbe withdraws the question.

Mr. Kaulback was only in my office a few minutes the time he took away the paper A. I don't recollect anything that passed between us during those few minutes. I think I mentioned that I had seen James Wentzell, and that I was going to get him up as a witness. I think I spoke first about the witness, but can't say positively. I don't remember that Mr. Kaulback asked me who I could bring up. Mr. Wentzell lives at Ritecy's Cove, about 8 or 9 miles from Lunenburg. I don't remember what Mr. Kaulback said when I mentioned Wentzell. I can't say that Wentzell was in my office during the time Mr. K. was there. I swear that nothing was said about getting any person in the town as a witness. I considered that Wentzell would be a good witness myself. 390

Wentzell had come in on other business that morning. I can't remember that there was any conversation with Kaulback at that time except with regard to witness. I think I can swear positively that nothing had been previously said to Mr. Kaulback about a witness. Kaulback did not go with me. Mr. Wentzell and I went up together. I take it for granted Mr. K. came up afterwards. I can't swear positively whether he went up before or after me. I can't remember that Wentzell was in the office while Kaulback was there. I can't say whether he saw Wentzell before going up to Mr. Murdock's. After I got through writing paper A, Mr. Murdock expressed a wish to execute it then and there. I couldn't say in what words he expressed that wish. I couldn't tell any of the words. I think Mr. Kaulback was in the room at that time, but can't

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swear positively. He only expressed the wish once. He saw the paper A before he expressed the 400 wish. Those words that I think are in Mr. Kaulback's handwriting on paper A, were not on when he took it away from my office.

I think I saw that paper again within a month in Mr. Kaulback's office. Those words written by him were then on it, except those additions, the paper was then in same state as when I finished copying it in Mr. Murdock's library, and when he expressed a wish to execute it, and it is now in same state with exception of those additions.

I don't remember any conversation on part of Mr. Kaulback in the library when I had finished copying the will. He may have spoken, but I don't remember. I can't remember any of the words or conversation that Mr. Murdock asked at that time during that Sunday interview, except 410 suggesting the alteration and expressing a wish to execute the will.

Neither can I recollect any of the subjects of the conversation except as already testified in my direct examination. He seemed more subdued than usual on that evening. He was a very old man, I think about 75 years of age,—a pretty old man. I knew that for I engraved his plate. I knew from information received from my father that he was an old man. I couldn't tell what he died from. I did not visit him in his last illness, but saw him four or five days before. I don't remember that I told Mr. Kaulback what time I'd be up at Mr. Murdock's, he may have known. I can't say.

I was first aware of the original draft having been made by Mr. K. when I went up on Sunday evening. I did not know it until I saw it. Mr. Kaulback did not tell me he had made a draft 420 before I saw it. I can swear almost positively.

Mr. Kaulback practices as a barrister in Lunenburg. Mr. K. did not explain to me at any time why he did not do this work himself, being a barrister, neither did he on the 14th or 15th November, 1875.

Mr. Weatherbe asks—Previous to the words "at any time," having been mentioned by Mr. Owen after the last question was put, did you give your answer with or without those words. 420 *Answer.* I gave them without, and added "any other time" on my own responsibility, but after the words had been used by Mr. Owen to Mr. Weatherbe.

Mr. Weatherbe contends it was the same as if to the witness.

I do not remember the occasion of the visit to Mr. Kaulback's office when I saw the paper A there. I think it was lying there and I accidentally saw it. Nothing transpired between us that I re- 430 member.

The words on envelope marked C. "The last will and testament of Beamish Murdock," and all writing underneath except the letter B, were made with the same ink and at the same time.

On the occasion of the visit to Mr. Kaulback's office when I saw paper A, I did not see paper C. I am positive of that. I never saw paper C after 15th November, 1875, until after Mr. Murdock's death, nor did I see the will during that time. I swear that I wrote nothing on the occasion of the visit to Mr. Kaulback's office. I first noticed that my seal was on envelope C in this (the Judge of Probate's office) it is from the ring on my finger. I would not have recollected whether Mr. Murdock or I sealed the envelope C, if I had not seen my seal on it. When I first went up to Mr. Murdock's house on the 15th, I think I went straight into the library, I found Mr. Murdock sitting there. I 440 mean on the 14th. When I went up on the 15th we went into the sitting room first (Mr. Wentzell and myself) on the 14th, I think, I went straight into the library. I can't swear who I saw first when I went up on the 15th. I think it was the girl or Mr. Kaulback's daughter. After we were in the room a few minutes, Mr. Murdock came in and I told him that I brought up the will. The next person I saw after Mr. Kaulback's daughter or servant was Mr. Murdock. I think the next person I saw was Mr. Kaulback, who came through the room. I don't remember whether I saw any other person or not. Mr. Weatherbe asks: Are you aware that Mr. Murdock desired to marry a very young girl in this town? (*Answer.*) I know nothing of my own knowledge but from hearsay.

Mr. Owen objects to the witness giving any hearsay evidence. Witness says there was a common report to that effect. 450

I never mentioned the subject to Mr. Murdock. I can't remember that anything passed on that subject. I was not acquainted with the young lady.

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I was not aware at the time of the execution of the will of Mr. Murdock's childishness with regard to young women. I never was aware except in this instance.

I did not think there was much difference between his tottering on that evening and the last time I saw him in the street. (Mr. Weatherbe asks)—“In your opinion would it not have been madness or silliness or childishness for a tottering old man in Mr. Murdock's condition to have married a young girl. (Answer.) There are certain circumstances in which a man in his condition would like to marry in order to be taken care of.

Mr. Weatherbe wishes to put the question again. Mr. Owen objects to Mr. Weatherbe reiterating the question, it having been already fully answered as appears by the minutes. 460

Mr. Weatherbe desires an explicit answer. Mr. Owen again objects, the former answer being explicit.

Judge allows question to be put again. (Answer.) I don't think it would have been madness. I wish to decline any further answer.

Mr. Weatherbe asks : Will you undertake to say that Mr. Murdock was not suffering at that time from senile dementia or second childishness. (Answer.) I can't say. But the man had too much intelligence for that. I will not swear he was not.

I think I had seen him a short time previous to 14th November. I think within a month. I had considerable conversation with him within that time. I swear I saw him more than once within 470 two months previous to 14th November.

Between September 4th and November 14th I saw him twice. I can swear to that. He seemed to be in somewhat better condition on both these occasions.

I can't say on which occasion, positively. It was in the library. I had a conversation which I remember particularly. I can't remember the date of it. Mr. Kaulback was present. No. I think it was Dr. Jacobs.

Mr. Murdock was relating anecdotes and incidents of his past life. He referred to his younger days when he was in the office of a gentleman in Halifax with my father (the Judge of Probate for this County) as students. There were different subjects discussed. I don't remember perfectly. What he said I can swear was not imaginative with reference to what he said of being in the office of a certain gentleman in Halifax with my father, and of his past life in his younger days. 480

Mr. Weatherbe asks—What part of the conversation referred to, with Mr. Murdock will you swear of your own knowledge was not imaginative? Ans.—With reference to being in the same office with my father. I can't swear to anything further.

I think he mentioned something about politics and persons that figured therein himself. John A. Barry. Two or three Admirals, related an anecdote of one Admiral. I can't trust my memory to say anything further. I don't remember any other matter at the time of execution of the will, except in connection therewith. There was some conversation afterward, but I don't remember what it was. I don't know who wrote his letters for him. 490

Mr. Weatherbe asks—Did you ever hear Mr. Kaulback say who wrote his letters for him at or about the time of his execution of the will.

Mr. Owen objects on the ground of Mr. Kaulback's statements not being evidence.

Mr. Weatherbe withdraws the question.

At the time of the execution of the will I resided with my father. I am a widower. A Crown Land Surveyor and County Surveyor and County Treasurer. Am not acting as Crown Land Surveyor now. There were four practising barristers at that time in Lunenburg. The population of Lunenburg is about 3000 within limits, including Mr. Murdock's house.

Re-examined by Mr. Owen.—I was in the habit of being in the society of Mr. Murdock previous to his decease from time to time from that of my first acquaintance with him. In speaking of Mr. Murdock's feebleness at different times in the course of cross-examination I referred to his physical state of health, and had no reference to his mind. 500

Mr. Owen asks—Did you or did you not observe any change in the mind or memory of Mr. Murdock from the time of your first becoming acquainted with him to the date of it, and subsequently to the execution of the will? If so, what? (Answer) I did not observe any change.

When I made use of the word subdued on my cross-examination I meant he was quiet. I observed nothing of childishness about him. He never manifested anything of that kind to me.

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I believe he was of sound disposing mind and memory. There was nothing to lead me believe that his mind was imaginative. He had some queer ideas about religion.

Mr. Owen states to witness by way of question, On your cross-examination you stated that 510 Mr. Murdock saw the paper A before he expressed the wish to execute it, explain that answer.

Mr. Weatherbe objects that this is not new matter and the words are themselves clear and explicit, and neither require or admit of any explanation.

Judge decides that witness shall answer the question.

(Answer.) Mr. Murdock was under the impression that that was the correct copy of the draft without interlineation, that was my impression.

Mr. Owen asks, Have you any further answer to give with respect to the last question?

Mr. Weatherbe objects on same grounds as above and, in addition, that the witness is now asked to explain an explanation.

Judge decides question shall be answered.

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(Answer.) He saw it because he was close to me, but did not examine it. I read it to him.

Mr. Owen asks with regard to your statement in your cross-examination as to Mr. Murdock's having expressed desire to execute paper A on the evening of 14th Nov. Why was it not then done and at whose request did you take it to your office and engross it?

Mr. Weatherbe objects on the ground that the transactions of the 14th were fully gone into on the direct evidence, and that this very matter was answered. That this is not new matter and that the question is double and involved. That the latter part of it suggests the answer to the first part of it and is unfair.

Mr. Owen consents to withdraw the words "and at whose request did you take it to your office and engross it," and does withdraw them. Mr. Weatherbe still objects to the question and 530 adds that the counsel has had the full benefit of the question contained in what is withdrawn and that the answer given may still be in the words withdrawn.

The Judge decides that that part of the question, "Why was it not done?" shall be answered.

(Answer.) Because those interlineations were on the paper. That I would take it to my office and make a proper copy.

Mr. Owen asks :—With respect to the answer given by you on cross-examination as to the original draft handed you by Mr. Murdock on the evening of the 14th November, being in part or whole in the handwriting of Mr. Kaulback, or words to that effect. Are you in a position to state that the whole of said original draft as handed you by Mr. Murdock was in the handwriting of Mr. 540 Kaulback.

Mr. Weatherbe objects, on the ground that the word part was never used by the witness, and that the question is a trap question, and that the only person who has suggested that word was Mr. Kaulback in the witnesses presence several times.

2d. That evidence was given of this original draft on the direct examination, and it was concealed that it was in Mr. Kaulback's handwriting, and he should not now have the advantage of re-examining, as he could have gone fully into the matter at first.

3rd. That the witness has already sworn twice to the paper being in Mr. Kaulback's handwriting without making any distinction as to part.

Mr. Weatherbe withdraws the objections.

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Answer.—I don't remember that the whole of it was in his handwriting.

Sworn to at Lunenburg, in the County of Lunenburg, }
this 26th day of May, A. D., 1876, before me, }

(Sd.) E. H. SOLOMON.

[Signed] GEORGE T. SOLOMON,
Judge of Probate.

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COURT OF WILLS AND PROBATE,

LUNENBURG, SS.

In the matter of the Proof of the alleged last will and testament, in solemn form, of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister, deceased, dated 15th November, 1875.

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The examination of James H. Wentzell, of Ritcey's Cove, in the County of Lunenburg, Farmer, taken before me, George T. Solomon, Judge of Probate for said county, this twenty-sixth day of May, A. D., 1876, who, being duly sworn, despoeth and saith:

I have known the late Beamish Murdock between three or four years, I think, before his decease.

(Paper marked B is placed in the hands of the witness.)

It is the last will and testament of Beamish Murdock, witnessed by me. I reside at Ritcey's Cove, and am a Justice of the Peace. Have been for about ten or eleven years.

Mr. Owen asks:—Have you been in the habit of drawing and witnessing wills during that period?

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Mr. Weatherbe objects, on the ground that its going beyond the issue.

Answer.—I have been in the habit of drawing and witnessing wills for the last six or seven years. I was in Lunenburg on the 15th November, 1875. I on that occasion went to the office of Mr. Edward H. Solomon, between 9 and 10 o'clock in the morning. I was Secretary of School, and went there to draw some county money. After going to the office of Mr. Solomon, I went to the residence of the late Beamish Murdock. I went direct from Mr. Solomon's office at the request of Mr. Solomon, and for the purpose of witnessing the will. Mr. Edward Solomon accompanied me. A girl came to the door. Mr. Murdock was asked for. We went into the room. Mr. Murdock came into the room almost immediately after we got there. Mr. Solomon, Mr. Murdock and myself were alone in the room. Mr. Solomon then handed Mr. Murdock the paper marked B, and said, I 580 have brought the will which you requested me to write. Mr. Murdock then took paper B in his hand. Mr. Murdock overhauled it as if he read it, until he was to end,—I think from fifteen to eighteen minutes. He put his finger along every line, on the greater part, as he went along. Up to that time we were alone in the room. Mr. Murdock made some remark with regard to his sight, when he commenced reading the will. He said he was very thankful, because his eye-sight was very good that morning,—better than for some time. It was a fine day. When he had finished reading it, Mr. Kaulback came in (Senator.) The latter said, "I understand you are about making Mr. Murdock's will, or witnessing," and further said, "You had better read it to Mr. Murdock." Mr. Kaulback then left the room. He made the remark in passing through the room. Mr. Murdock replied, "There is no necessity of reading it; I have read it myself." Mr. Solomon then took 590 the paper and opened it, and read it to Mr. Murdock, in my presence. He read it clause by clause, and rather stopped at the end of each,—at the end of each clause. Mr. Murdock responded, "That's right." Mr. Solomon read every word of the will to him, with exception of signatures, which were not then on. He assented to every portion of it. No person but myself, Mr. Solomon, and Mr. Murdock were present when the will was so read and assented to by Mr. Murdock. After it was so read and assented to by Mr. Murdock, the latter said: "There is not room to write my name straight; I have to write it in this manner," (pointing out the direction in which its affixed to the will.) I saw Mr. Murdock put his thumb on the seal. That signature to paper B is Beamish Murdock's signature. He signed it as his last will and testament. He affixed his signature thereto as his last will and testament, in the presence of myself and Mr. Solomon. Mr. Solomon and myself witnessed the signature of Beamish Murdock thereto; immediately after, as soon as he (Mr. Murdock) was done writing his signature. That is Edward H. Solomon's signature, as witness to that will. Edward H. Solomon affixed his signature as witness to that will in presence of myself and Mr. Murdock. 600

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The other signature as witness to that will is my signature. I affixed it as witness to that will, in presence of Mr. Murdock and Mr. Solomon.

When I say "as witness to the will," I mean witness to the signature of Beamish Murdock thereon. There was not much request at all about witnessing the will, but Mr. Murdock said we had to witness to it. I remember that distinctly.

Mr. Murdock affixed his signature to that paper marked B, in the presence of Mr. Solomon 610 and myself. Mr. Solomon executed it as a witness, in my presence and Mr. Murdock's.

The will was then folded up and put in the envelope, which was endorsed by Mr. Solomon, and was sealed then and there immediately after the execution. Mr. Solomon, Mr. Murdock and myself were the only persons in the room when the will was executed. To the best of my knowledge, Mr. Solomon sealed the will for Mr. Murdock, and then handed it to Mr. Murdock. It appears to me that Mr. Murdock made some reference that he had relations in Halifax that might think they were heirs to him,—that might call themselves heirs. I can't name the particulars, what further he said. The way he spoke of them was the way in which I here speak of them.

Mr. Owen asks:—If you don't remember the exact words made use of with respect to his relatives by Mr. Murdock, what impression was conveyed to your mind by the general remarks made 620 by him with respect to them?

Mr. Weatherbe objects.

Answer.—I don't know of any impression being left on my mind at all. He referred to his relations, after the execution of the will.

I did not remain very long after the will was executed,—about half an hour; perhaps only a quarter of an hour; a half hour, I suppose. I wouldn't say for certain it was half an hour,—perhaps it was only a quarter of an hour after the execution of the will.

Mr. Solomon and I had a short conversation with him after the execution of the will. When the will was executed by Mr. Murdock and the witnesses, we were as near together as we could sit; of course not jammed. Mr. Murdock sat in the middle at the table; we could all see each other's 630 faces.

Mr. Owen asks:—What was the state of Mr. Murdock's mind on the morning of the 15th November, when the will was executed.

Mr. Weatherbe objects.

The Judge decides question shall be answered.

Answer.—Well, I judged the state of the mind was good. He was of sound mind. I believe that he was fully capable of making a will at the time. I have not the least doubt of it. Mr. Solomon and I left the house together. Before we left the house, Mr. Solomon left the sitting-room at Mr. Murdock's request. He went into the hall. I saw Mr. Murdock hand Mr. Solomon a note. It may have been a five dollar note, or a ten or a twenty dollar, I can't say. Mr. Solomon and 640 Murdock then returned to the sitting-room as soon as it was sealed and endorsed. Mr. Murdock called Mr. Solomon out of the room. It appears to me that Mr. Murdock laid the will on the table or in a hat. He did not give it to any one before I left, to my recollection.

Mr. Kaulback came into the room after the execution of the will. It was a couple of minutes before we left the house.

Mr. Owen states that he dispenses with the further evidence of Mr. Wentzell for the present, intending, if necessary, to recall him.

Mr. Weatherbe repeats the statement entered at the close of Mr. Solomon's direct evidence, in reply.

Cross-Examined by Mr. Weatherbe:—I am not a friend of Mr. Kaulbacks. I know him. 650 I can't say whether he or Dr. Slocumb, or Mr. Jost, supported my application for a Commission. I was appointed a Justice of the Peace by petition of the people, I didn't apply for it myself. I had been in the habit of drawing and witnessing wills, but not as a regular business, but whenever called upon. I do it for pay. I wrote about a dozen the past year. I can't say that I witnessed any wills but those I wrote myself the past year and Mr. Murdock's. I only look upon it as a business, when I wrote them myself. I don't recollect that I saw Mr. Kaulback that morning before going to the house or speaking to him. I am almost positive sure I did not see him. I swear I didn't speak to him. I

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would hardly swear I did not see him. I swear that he was not in Solomon's office while I was there, to my recollection.

I swear positively I did not hear Solomon tell Kaulback that I was going up as a witness. I 660 swear positively I didn't speak to Mr. Kaulback in Solomon's office, or in Lunenburg, previous to going up to the house that morning. I have not said on my examination that I couldn't recollect seeing Mr. Kaulback, or speaking to him.

I have stated everything that occurred on the visit to Mr. Murdock's house on the 15th that I remember or recollect of with regard to the questions put to me. Mr. Murdock shewed no memorandum books of his writings. He said his hand wasn't good any more, and he couldn't write as he could once. I recollect nothing else that occurred. The conversation was very short. We had some refreshments before we left: cake, cheese and biscuit, and some sort of liquor, wine or brandy, I think wine. I think the girl brought it at Mr. Murdock's instance. I and Mr. Solomon and Mr. Murdock were present then, and I almost think Mr. Kaulback came in then. When Mr. Kaulback 670 at first passed through I saw the door he went in. I can't say that he came back that way. There were two ways of coming into the room. I have no recollection of seeing him come back from the door he went through. I did not know that Mr. Kaulback had drafted the Will. Neither Mrs. Murdock, Kaulback, or Solomon, told me. I was produced in the Town of Lunenburg on that occasion, in consequence of my knowledge of proving Wills.

Mr. Owen interposed to know whether the witness knew the meaning of the word "produced" and witness swore he did.

Mr. Murdock took cheese and cake, no one else but us four were present or partook of the refreshments.

Mr. Murdock put his finger along nearly each line of the will as he read. I have given all 680 the grounds for my knowing the state of Mr. Murdock's mind that I had myself. Mr. Kaulback said he had better have the will read over to him. Mr. Murdock replied there was no necessity for that I almost think Mr. Kaulback repeated again that it ought to be read and then it was read to him.

Mr. Weatherbe asks "Did he seem very subdued?"

Answer.—I don't exactly understand the word. I understand by the word "subdued" brought down, or if a man is under subjection to anything. I also understand it to mean, under subjection to any person. I did not think he was subdued. When Mr. Kaulback repeated that it had better be read I don't remember that Mr. Murdock said anything. He listened to the whole of it being read over after he had read it himself. He seemed to take an interest in it the second time it was read, and to like what was done. 690

It appears to me that he took rather more interest in it when Solomon read it than when he read it himself. I considered that one of the evidences of his soundness of mind. I considered that the strongest evidence of his soundness of mind as I judged, but there was very little difference in the interest if any.

Mr. Weatherbe asks:—Was that last answer an answer to a question put by me?

Answer.—I went further in saying that there was very little difference in the interest he took in it when he read it himself, and when Mr. Solomon read it, if any.

I consider that difference a part of the evidences of his soundness of mind.

Do you consider it one of the evidences?

Answer.—Yes!

Do you consider it the strongest evidence?

Answer.—I can't say that.

Have you already sworn so?

Answer.—I swore it was one of the strongest evidences. I have not sworn so.

Question.—What do you consider a stronger evidence?

Answer.—The whole conversation from first to last when I entered the house.

Question.—What part of the conversation?

Answer.—All through. I can't mention a particular part.

Question.—Have you not already sworn that you have given all the grounds upon which you based your opinion of his soundness of mind? 710

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Answer.—I have.

Question.—Have you given the conversation as far as you can recollect?

Answer.—I think I have.

Question.—Do you now recollect anything further; refresh your memory and explain fully?

Answer.—There is nothing on my mind that I can think of.

Question.—Is there any other as strong evidence in what took place of testator's soundness of mind as the difference of interest he took in the reading?

Mr. Owen objects to the question on the ground that the witness has not stated positively that there was any difference and it, together with several of the preceding are catch questions to improperly endeavor to entrap the witness.

720

Judge admits the question.

Answer.—I consider the whole transactions from first to last—the whole conversation just alike.

Question.—Do you consider there was no other evidence of soundness stronger than another?

Answer.—Yes! That's what I consider they were alike.

Question.—And you have given all that passed that you recollect?

Answer.—I have.

Question.—Were the words on paper (C.) put there at the same time and with the same ink.

Answer.—The words "the last will and testament of Beamish Murdock," were written first. It's somewhat on my mind that Mr. Solomon asked who it should be opened by, and those words below were put on at Mr. Murdock's suggestion almost immediately, about a minute after. To the best of my knowledge the words below are in the writing of Mr. Solomon, as I swear those above are. I won't swear for certain that the lower part was written by Mr. Solomon, but I think it was. They were all written at the same time. I don't recollect anyone else using a pen at that time. I know Mr. Kaulback's handwriting generally. I have often seen Solomon's writing and it looks like his.

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I think Mr. Solomon entered the room first. I think I was in the house about an hour, perhaps less. The first thing that was done, Mr. Solomon handed Mr. Murdock the will, or laid it on the table. Mr. Kaulback came in after that, while the will was being read by Mr. Murdock. It was between fifteen and twenty-five minutes from the time the will was handed Mr. Murdock or laid on the table, to the time Mr. Kaulback came in, in my opinion. When Mr. Murdock first came in the time was bid. It was a fine day, and we looked out of the window and made some remark about a vessel and its being a fine day, and almost immediately Mr. Solomon handed him the will which he had requested him to write. Mr. Solomon either gave it into Mr. Murdock's hands or laid it on the table, and Mr. Murdock took it up and opened it.

740

Question.—Never mind any further conversations! What was the next thing done?

Mr. Owen asks to have the question put down.

Answer.—Mr. Murdock read it. Mr. Kaulback passed through the house then, when he had finished reading it. I judge that Mr. Murdock had it in his hands, reading it, about eighteen minutes. Mr. Solomon was not doing anything during that time but listening and looking on. Mr. Kaulback, to my knowledge, did not stop any time, but passed straight along to the next room, or some other part of the house, as if he had business there. After the will was executed—about five or ten minutes after—Mr. Kaulback came in; during that time there were a few words spoken, as people would have together, of no great importance. From that time until the end, I am not prepared to say whether Mr. Kaulback left the room. But I almost think that Mr. Kaulback did leave the room before we left.

750

Mr. Weatherbe asks—

To the best of your recollection, what took place while Mr. Kaulback was out of the room the last time?

Answer.—I haven't any recollection of anything, because I don't remember whether Mr. K. went out of the room or not.

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Question.—What gives you this impression that Mr. K. went out of the room before you left?

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Answer.—Because Mr. Solomon and I came away together alone, to the best of my knowledge.

Question.—Then, would you suppose that, if Mr. Kaulback had been there, he would have come away with you?

Answer.—I don't know whether he would or not, but in all probability he might.

It was first sealed, and the endorsement put on, before Mr. Murdock left the room and called Mr. Solomon out. I can't remember how long after, or whether it was before or after the refreshment. 770

After the execution of the will, the first thing done was to put it in the envelope and seal it. It took three or four minutes to seal close and endorse it, to the best of my knowledge. I don't know whether Mr. Kaulback came into the room before the money was paid. I didn't see where Mr. Mr. Murdock got the money, but it appears to me he took it out of his pocket. The first I saw of it was in Mr. Murdock's hand in the hall. I don't remember seeing it before Mr. Murdock got into the hall.

Re-examined by Mr. Owen :—

Question.—With reference to the statement made by you in your examination to the effect "That you were produced in the Town of Lunenburg on the occasion of your witnessing Mr. Murdock's Will, in consequence of your knowledge of proving wills." I ask, had you any knowledge at the time of your leaving home on that morning for Lunenburg of Mr. Murdock's intention to make or execute a will, or of your being called upon to witness it. 780

Mr. Weatherbe objects to the question on the ground—

1st.—That it is not a subject for re-examination.

2nd.—That the witness had an opportunity of explaining.

Judge decides question shall be put.

Answer.—I had not.

Question.—Had you, or had you not any knowledge of Mr. Murdock's intention to execute a will, or of your being called upon to witness it until after your arrival in Lunenburg? 790

Mr. Weatherbe objects that this is the subject of direct examination and not matter for re-examination.

The judge decides the question shall be put.

Answer.—I had no knowledge of anything and was not called upon before I came to Mr. Solomon's office.

I can't answer how long after the will was executed the refreshment was brought in. It was not very long. I'm not prepared to say how long.

They consisted of cheese, cake and biscuit, and wine or brandy. I'm not sure it was either. It was something between. It was not over and above good. I don't think there was much strength in it. 800

Mr. Murdock did not partake of anything to drink at that time to my knowledge. There was water brought too. I don't know whether he took any of that.

Mr. Owen states that he withdraws Mr. Wentzell, with intention of recalling him, if in his opinion necessary.

(Sgd.)

JAMES. H. WENTZELL.

Sworn to at Lunenburg, in the County of Lunenburg, the 27th May, 1876, before me,

(Sgd.)

GEO. T. SOLOMON,
Judge Probate.

Mr Owen now states that he rests having made out a *prima facie* case by the two subscribing witnesses to the last will and testament of the late Beamish Murdock, dated November 15th, A. D. 1875, in conformity with the opinion hereinbefore expressed and noted by the Judge of Probate, and prays for probate of said will. 810

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COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof in solemn form of the alleged last will and testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister, deceased, dated 15th November, 1875.

The examination of Elizabeth Peck, this 27th day of May, A. D. 1876 :—

Mr. Beamish, being one of the petitioners, being present, Mr. Owen gives notice that he will object to Mr. Beamish giving his testimony unless he is called as a witness and his testimony taken before taking the testimony of any other witness. 820

Mr. Weatherbe called Elizabeth Peck, on behalf of Henrietta James, the petitioner.

Mr. Owen again repeats the notice with respect to Mr. Beamish.

Mr. Weatherbe proceeds with the examination of Elizabeth Peck, who states as follows :

I am 20 years of age. I am the daughter of Widow Peck, who was the housekeeper of the late Beamish Murdock. I lived at Mr. Murdock's house with my mother. I didn't go at the same time my mother went. I don't know how long after, but I went in March of the year before he died. I don't recollect whether he had gone to Halifax and returned at that time. I don't know how long I remained with him. I don't know what time it was when I left. I recollect Mr. Kaulback and his family coming to his house to live. I left after they came. I don't know what month it was. I don't know how long after they came I left. I think about a week. I don't remember any dates. I had remained all the time with my mother until then. Only mother and I lived there with Mr. Murdock from the time I went there until Mr. Kaulback and his family came. I recollect the state he was in from the last of May of that year to the time I left. He was feeble. I don't know what state of mind he was in. I can't rightly say then. 830

Mr. Weatherbe asks : In May, do you mean ?

Mr. Owen objects that it is a leading question.

The judge decides it a leading question and ought not to be put.

Question.—What time do you mean by then ?

Answer.—I don't know what I mean by then. 840

My mother took the personal care of the old man, all the time. Mr. Kaulback's family was in the habit of coming to the house. The children, little Mary and Russic used to come to the house. 840

Question.—Did you ever see Senator Kaulback or his wife there ?

Mr. Owen objects on ground that question is a leading one, and of the previous question being which of Mr. Kaulback's family were in the habit of going there.

Judge receives the answer.

Answer.—I saw Mrs. Kaulback and Mr. Kaulback there.

Question.—Were they there frequently or seldom ?

Mr. Owen objects. 850

Answer.—They were there frequently, Mr. Kaulback and his wife.

During that time I did see Mrs. Kaulback alone with Mr. Murdock.

Question.—Did you ever see any acts of affection between them ?

Mr. Owen objects, the question being leading and otherwise improper.

The judge decides it to be an improper question in the way its put.

Question.—Did you ever see, observe any particular intimacy between them ?

Answer.—Well, I never was where they were alone, and can't say ; once in passing the door of the little front parlor I saw him kissing Mrs. Kaulback. That was after they were living there. The door was open.

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Question.—After Mr. Kaulback and his family came to live at Mr. Murdock's, and before you 860 left, did you ever hear Mr. Kaulback express an opinion as to Mr. Murdock's being able to do business or knowing right from wrong?

Mr. Owen objects to the question being a leading one and putting the answer into the mouth of the witness.

Answer.—I did.

Question.—Will you state what passed on that occasion?

Mr. Owen objects on the ground that the answer's suggested by the preceding question.

Judge decides question proper.

Answer.—I heard Mr. Kaulback say in my presence, that Mr. Murdock was childish and wasn't able to attend to his own business. That anyone could cheat him if they liked. Nothing further was said by Mr. Kaulback that I recollect. I went out. Mother was there and no one else. It was in the kitchen. It was only used as a kitchen. This was after tea, and he was talking to mother. He didn't remember anything at that time. He was kind of forgetful. I don't remember how long it was he was in that way. 870

Question.—About how long was he that way before that time?

Answer.—Well about a week. He didn't know where to put his things and mother had to find everything for him.

When Mr. Kaulback made the statement with regard to Mr. Murdock's being childish, the latter was out taking a walk with Mrs. Kaulback, down on the wharf.

Previous to that time was he in the habit of forgetting things or not? 880

Mr. Owen objects being another leading question.

Judge rules question out.

Question.—Can you mention any act of forgetfulness on the part of Mr. Murdock?

Mr. Owen objects, being leading.

Judge allows question.

Answer.—I remember his leaving his basket and trowel in the garden and he had to call mother to find it for him. He had taken some weeds down to throw over the fence in the basket. He left the basket stand by the fence and went to some other part of the garden and when he went to look for his basket he couldn't find it, and called Mrs. Peck and said, I have lost my basket and can't find it. That's all I remember. This was before the Kaulbacks came there. I don't know how long. 890 It was a week before.

Mr. Murdock had a very valuable watch. I don't remember any incident in relation to it. Mr. Murdock had it when I left I suppose; I don't know. I heard him say the Kaulbacks were coming there to live. He said it to my mother. I don't remember what mother said—when Mr. Murdock told mother, all I heard mother say was that she was satisfied and that Mr. Murdock was master of his own business.

I think it was the day before they came. I didn't hear Mr. Murdock state how long the Kaulbacks were going to stay there. All I know about the letter was what I heard mother say. She said nothing of a letter to me in Mr. Kaulback's presence but she told me about it at the time. From May or June down to the time I left, Mr. Murdock was about the same in body and mind, better one 900 day and worse the next.

When Mr. Kaulback said that Mr. Murdock was childish, mother I think answered him, yes. I do not remember the exact words.

Mr. Murdock required a great deal of attention. He required it in a great many ways. Dressing him when he went out. Mother always had to get his clothes for him. She always looked after him. When he wanted a clean shirt on she would tell him of it, she told him when he went out. He was kind of neglectful of it and didn't always think of it himself; he would say "it is all right Mrs. Peck, if you think so." She would get it for him. Sometimes I'd see her get it and sometimes not. I often saw her get his slippers for him. He was not particular about his eating. Mother would attend to the choice of it. Mother would ask him what he would have and he would sometimes, "a 910 little soup or just as you like Mrs. Peck."

Question.—Would she treat him as an ordinary man or how would she treat him?

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Answer.—She would treat him more as a child. He was kind of childish. She would treat him kind and do as he liked. She treated him that way while I was there and before. She always treated him kind and did everything for him.

Question.—What do you mean by "did everything for him?"

Answer.—I mean in dressing him and looking after him and seeing that he was always tidy and clean when he went out. He required attention in the night. Mother gave it to him. He required attention frequently. Mother would always see to him when he went to bed, and get him ready for bed. I was not present when mother was present in his private room. Before the Kaulback's came to live there he would go often to their house. Sometimes he'd go himself and sometimes Mary and Russic or Mrs. Kaulback would come for him. One time Mrs. Kaulback and the two children came in the carriage to take him for a drive. I saw Mr. Murdock at the time. Little Mary took the message in to him at the time. We both saw him. He was lying down. Mary told him she wanted him to go for a drive with her ma. He didn't want to go, but she said her ma would like him to go, and then he went. Her ma didn't go in. He would sometimes stay there at night, between nine and ten and after ten. He was very feeble in his walking. Well, feeble in his legs. He couldn't walk any great distance.

A short time before she went away, Mr. Murdock gave mother some things,—a stove and some spoons (silver). I think a half dozen; not sure; I didn't count them. When mother first went to keep house for Mr. Murdock, he told her those spoons were hers, and when she left in my presence she said, "Well, Mr. Murdock, I suppose I can have the spoons that you said I could have, that you gave me;" and he said "Certainly, Mrs. Peck," and then she asked him if she could have the stove, and he said yes. He got them back after the Kaulback's came there; and after we left, Mrs. Kaulback sent for them, and mother sent the spoons to the house. I didn't hear anything that passed after that, when Mr. Murdock and Mrs. Kaulback was present with my mother. I don't recollect Mr. Murdock's being in Halifax at any time; I recollect his being at New Ross. Don't recollect the time. I know Mr. Charles Beamish; I recollect seeing him at Mr. Murdock's house. As near as I can recollect, I saw Mr. Beamish at Mr. Murdock's once; that was before Mr. Kaulback came there to live. Mr. Beamish Murdock, I think, went occasionally to church in the mornings. I couldn't say how often he went between June and the time I left.

Question.—Was it more than three times?

Mr. Owen objects, on the ground that the preceding question was, "Do you know how often Mr. Beamish went to church between June and the time you left?" which was answered by the witness in the negative, and the latter question suggests the answer.

Mr. Weatherbe contends that that was not the form of the question.

Answer.—I couldn't swear Mr. Murdock was regularly visited by the clergyman. Between four and five times that I remember, between June and the time I left; I refer to the clergyman, Mr. Owen. I never heard them conversing on religious subjects. Sometimes they conversed when he was there. I don't know whether there was a time they did not converse, as I was not present. He would remain about an hour or two hours sometimes. During those times, Mr. Murdock would be smoking sometimes, and reading and talking about his garden. The whole time they'd be talking about the garden, the library, or something.

Question.—Would he be doing anything else besides smoking?

Answer.—No, he wouldn't. They used to walk together in the garden. Mother was present with them on some occasions when I was not.

Question.—Could you state on how many occasions?

Answer.—I could not. When Mr. Kaulback and his wife would be there, they'd be talking. They were with him alone; can't say how many times. My mother was present with Mr. Murdock, Mrs. Kaulback and Mr. Kaulback, when I was not; can't say how often. Mother would be present with him more frequently than I.

Question.—Was your mother ever present when Mr. Murdock and Mrs. Kaulback were together and you not there, and how often?

Answer.—Yes, they were, but can't tell how often.

The kitchen opened by two doors,—one from the library, the other from the bed-room. The

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bed-room also opened into the sitting-room. There was no door from the library into the bed-room. There's a door from the sitting-room into the hall. In passing through the sitting-room into Mr. Murdock's bed-room, a person would first go into a little hall and then into the kitchen. There was no servant there before or at the time; I left after the Kaulback's came. The latter had servants in their other house before they came to live there; one of those servants went to Mr. Murdock's after I left, and as far as I understand, remained there until his death. I was not paid anything after the Kaulback's came. Mr. Kaulback paid mother some money. I don't know whether they boarded there or not. I don't know who was master of the house after Kaulback's came, or whether it was Mr. Kaulback or Mr. Murdock. I did not see Mr. Kaulback transact any other business of the establishment or pay any other money, except that to my mother.

Question.—How long did you understand the Kaulback's intended remaining there?

Mr. Owen objects.

Mr. Weatherbe withdraws the question. Mr. Weatherbe repeats the question with the addition of the words, "from Murdock, Kaulback or his wife."

Mr. Owen objects on ground that the understanding is presumed by Mr. Weatherbe, and not stated by the witness.

Mr. Weatherbe withdraws this, and repeats the first question.

Mr. Owen objects on the ground that there was no understanding previously referred to by the witness.

Mr. Weatherbe states that he withdraws both questions to save time. Mr. Murdock was sick a couple of times between June and the time I left. He was not in bed. I don't remember of seeing the Doctor or any doctor there between June and the time I left. I think the childishness and feebleness of which I speak was just from old age.

Cross-examined by Mr. Owen:—

I first went to live at the house in March. Don't remember the day or date. As my mother was there, I was not tied down to the house in any way, but ran off when I pleased.

Question.—Situated as you were, I suppose you didn't take much interest in what was going on?

Answer.—Well, of course, when I was in the house I knew what was going on, but when I wasn't, I did not.

Question.—Have you or have you not given all your reasons for his being in your opinion childish.

Answer.—I have given all I know.

During all the time I was at Mr. Murdock's house, he was some days worse and others better. He was in the habit of, and did attend to his garden that spring of 1875. He was in the habit of rising early and getting out there early in the morning. He had a pretty large garden. Mother and he put in the seeds. I think mother put in the most of them. Mr. Murdock put in very many of them when mother was not in the garden.

Question.—How long, after your mother went to live there, did you go; about how long after, as near as you can remember?

Answer.—I don't remember; about a year after.

Question.—You stated in your direct examination that Mr. Murdock gave your mother a stove and some spoons.

Answer.—He gave her the spoons when she first went there to live. He gave her the stove two or three days before she left. I think in the morning she asked him for the stove, and he gave it to her.

I was present; no one else. It was in his bedroom. I could not say where Mrs. Kaulback was. I think in the house; I can't say where or what part.

I don't know where Miss Edna Kaulback was at that time.

When mother was leaving, she said to Mr. Murdock, "I suppose I can have the spoons you gave me when I first came."

Question.—Beyond that, do you know anything about the spoons?

Answer.—Yes, I know that Mrs. Kaulback sent for the spoons afterwards.

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Question.—Irrespective of that conversation, do you know anything, of your own knowledge, of Mr. Murdock having given these spoons to your mother? 1020

Answer.—No.

Question.—Did you charge your memory particularly with any conversation that took place there while you were there in Mr. Murdock's house?

Answer.—No, I did not.

Question.—Was Mr. Murdock in the habit of reading and writing a good deal while you were there?

Answer.—Reading, he was.

Question.—Was he in the habit of writing?

Answer.—Yes, he was sometimes, when I'd see him.

Question.—May he not have been in the habit of writing frequently when you didn't see him? 1030

Answer.—Well, I suppose he was.

Question.—May not the Rev. Mr. Owen have frequently been at the house when you were not at home.

Answer.—Yes, he may have been.

Question.—Now, Miss Peck, you stated that on one occasion your mother, Mrs. Kaulback and Mr. Murdock were together, when you were not there. How could you state that on your oath.

Answer.—I was in some part of the house and knew they were there alone.

Question.—How did you know?

Answer.—I saw mother go into the room when Mr. Kaulback and Mrs. Kaulback were there. 1040

Mr. Weatherbe asks the same right of explanation as was allowed Mr. Owen in the case of the witness Wentzell, as to the meaning of the word "produced." After hearing Mr. Owen and declining to hear Mr. Weatherbe further, on account of this interruption by Mr. Weatherbe, the Judge decides that he declines the request, the question having been fully answered, and that Mr. Owen proceed with his examination.

Question.—Miss Peck, you referred to some conversation between Mr. Kaulback and your mother in the house, relative to Mr. Murdock. What gave rise to the conversation?

Answer.—I don't know, no more than I heard Mr. Kaulback and mother talking.

Question.—Can you undertake to state the exact words of that conversation?

Answer.—No; I didn't understand every word that was said; but I heard Mr. Kaulback say 1050 that Mr. Murdock was childish, and couldn't do his own business.

Question.—Who said that?

Answer.—Mr. Kaulback.

Question.—What time of the day was that?

Answer.—It was after tea.

Question.—When was that?

Answer.—After they were living there.

Question.—How long after tea?

Answer.—It wasn't very long, because the dishes wasn't washed yet; it wasn't immediately after; Mrs. Kaulback was out walking. I saw her out. 1060

Question.—How did you know she was out walking?

Answer.—She went out after tea.

Question.—How many days was this after they came there?

Answer.—I don't know.

Question.—How long before you left there?

Answer.—Two or three days. I don't know exactly how long.

Question.—Were your mother and the Kaulback's on good terms at the time she left.

Answer.—Not on very good terms; I don't think they were.

They have been on bad terms since she left, as far as I can see. I don't know how long they were on bad terms before we left. When they first came to live there, she and the Kaulback's 1070 were on good terms.

Question.—How long after?

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Answer.—They were on good terms until mother knew she had to leave Mr. Murdock's. I don't know how long it was before my mother left that she knew she had to leave.

Question.—Have you or have you not frequently talked over this matter with your mother?

Answer.—Sometimes I did and sometimes I didn't. I never concerned myself much about Mr. Murdock's business anyway, nor nobody else.

Question.—Did your mother tell you how much she was to get under the other will,—what they call the other will?

Answer.—Two hundred pounds.

1080

Question.—What?

Answer.—I don't know what. Pounds my mother said,—two hundred pounds.

I saw Mr. Charles Beamish once at the house. I can't say how much oftener he was there. I wouldn't say he was not there more frequently; I don't know.

Question.—Now, then, Miss Peck, do you know that your mother received a letter from Mr. Murdock requesting the return of the spoons?

Answer.—There was a note, I think, came to the house about the spoons; she sent a letter. I don't know who sent the letter. I didn't say that.

Question.—Did you see the letter?

Answer.—I seen the note. I don't know whose hand-writing it was in.

1090

Question.—Was or was not Mr. Murdock stubborn, self-willed?

Answer.—I don't know what you mean by it.

Question.—I mean, did he or did he not often like to have his own way in opposition to others?

Answer.—I couldn't swear to it.

Question.—Why can't you swear to it?

Answer.—I don't know.

Re-examined by Mr. Weatherbe.

Question.—The seeds referred to in your cross-examination I suppose were planted in the spring?

1100

Answer.—In gardening time.

Question.—Do you recollect what months?

Answer.—I don't know. I don't know how he planted those he planted himself.

Question.—Do you recollect of his ever getting up in the night to go out in the garden.

Answer.—No, I don't.

Question.—Do you recollect hearing your mother state that she found him once preparing to go into the garden at night?

Mr. Owen objects on the ground that it is hearsay evidence, a leading question, no reference made to on cross-examination by Mr. Owen.

Judge shuts question out.

1110

Question.—Did your mother ever tell you until after the death, how much was in the will?

Mr. Owen objects as suggesting answer.

Answer.—She told me before and after that Mr. Murdock had left her something.

Question.—Did your mother tell you who told her?

Answer.—Mr. Beamish said he left her something. Mr. Beamish told mother the time that he was down; don't remember when.

I never heard Mr. Murdoch himself talking to mother about it.

What Mr. Beamish told mother was before the Kaulbacks came to the house.

Question.—What further did Mr. Beamish say?

Answer.—I don't know, I didn't hear any more.

1120

Question.—When Mr. Owen referred you to your mother, Mr. Kaulback and Mr. Murdock being together alone, and afterwards asked you how you knew; you stated that your mother went into the room when Mr. Kaulback and Mrs. Kaulback were there. I wish you to explain that.

Mr. Owen objects on the ground of its not being new matter, and also on the ground of the Judge having decided that the question was fully answered in the first instance.

The Judge allows the explanation.

Answer.—I meant that I seen mother go in the room when they were there.

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Question.—When who was there?

Answer.—When Mr. and Mrs. Kaulback were there.

Question.—I refer you now to this question, "You stated that on one occasion your mother 1130 and Mrs. Kaulback and Mr. Murdock were there," and in answer to Mr. Owen, referring to that, you referred to Mr. Kaulback; I wish you to explain?

Mr. Owen objects on the ground that it was the subject matter of the direct examination and fully answered by the witness and not new matter elicited on the cross-examination, and that it is a reiteration of a previous question put by Mr. Weatherbe on the re-examination and answered by the witness.

The Judge decides question shall not be put.

Question.—Did not Mr. Owen in first referring you to the matter first mention Mr. Kaulback's name?

Mr. Owen objects for the reason given for objecting to last question and also as being leading 1140 and suggesting the answer to the witness.

The judge decides question shall not be put.

(Signed)

BESSIE PECK.

Sworn to at Lunenburg, in the County of Lunenburg, this 29th day of May, A.D., 1876, before me,

(Signed)

GEORGE T. SOLOMON,
Judge of Probate.

COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof in solemn form of the alleged last Will and Testament of Beamish 1150 Murdock, late of Lunenburg, in the County of Lunenburg, Barrister, deceased, dated 15th November, A. D. 1875:

The examination of Joseph Outram, Jr., of Halifax, in the County of Halifax.

Taken before me, George T. Solomon, Judge of the Court of Wills and Probate, and for granting Letters of Administration within the County of Lunenburg, the 26th day of July, A. D. 1876, who being duly sworn, deposeth and saith on behalf of Petitioners:—

I reside at Halifax, and carry on business as a commission merchant. It is now over twenty years since I was first acquainted with the late Beamish Murdock.

I was well acquainted with him previous to his coming to Lunenburg. After he came to Lunenburg, I saw him several times in Halifax. I saw him last in Halifax, about March or April, 1875, the last time he was there I think. I next saw him in Lunenburg latter end of August or 1160 beginning of September, 1875, at the place he last resided. I was on my way to Liverpool in Steamer, and my father gave me a letter from him to Mr. Murdock. I took the letter up to him at his house. He was a very old friend of my father's, they had not corresponded, but would write occasionally. They had been intimately acquainted for over thirty years before Mr. Murdock came to Lunenburg, I mean about thirty or forty years up to the time of his death. It was not a letter of business, just a friendly letter. I found a great change in him from the last time I saw him. I handed him the letter in his room. He was alone. I was greatly shocked at his appearance, he had changed so much. He seemed to be quite imbecile; did not know me. I mentioned my name to him, and then at first he didn't seem to comprehend who I was. I handed him the letter, he

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handed it back to me, and asked me to read it to him, said he could not see. I read it to him and he 1170 did not seem to take any interest in it at all, and made no comment upon it. His mind seemed to me to be quite gone. He did not seem to be able to fix it on any subject. In talking with him he seemed to be very childish—seemed to have no memory and could not carry on a conversation at all. I was only a short time with him. I tried to engage him in a conversation upon a visit that my father had suggested making to him, but he seemed to have forgotten all about it. He moved about very little. He went from his chair to the cupboard and back I think. His walk was very tottering. His dress was very slovenly,—seemed to be quite careless about it. His trousers were all stained with urine marks. I could not have been there more than a quarter of an hour. I think I was shocked at his appearance, both mentally and physically. I left Mr. Murdock and the house, met Mr. Kaulback and returned with him. I did not remain five minutes. The boat was blowing 1180 then. Then I went down on board alone, and went on to Liverpool. I left Mr. Kaulback with Mr. Murdock. I don't remember having mentioned to Mr. Kaulback the condition in which I had found Mr. Murdock.

Cross-examined by Mr. Owen:—

I cannot tell how long it was before March or April 1875 that I saw Mr. Murdock previously. I did not meet him very often since he came to Lunenburg. I saw him on more than one occasion in Halifax after he came to Lunenburg. He did not, that I remember, tell me at the time that I saw him in Lunenburg, as referred, to refer to a recent fit of sickness, or that he was recovering therefrom, nor did he at that time, that I remember, refer to any parties from Halifax, who had recently visited him. He told me he could not see to read the letter. I think he told me that he could 1190 not recognize me in consequence of his sight being impaired.

One of my reasons for coming to the conclusion that his memory was defective was that he didn't remember about the visit that my father had promised to make him. That was the subject of the letter. (Mr. Owen objects to witness offering any evidence, or its being taken down in the minutes with respect to contents of either, he not having asked for any information with respect to said letter or its contents, and respondents not having received any notice to produce the same.) I was personally present when an arrangement of that sort was entered into between my father and Mr. Murdock. It was perhaps a year previously, and perhaps longer. I cannot say how much longer. It was in my, (the witness's) office in Halifax. The marks referred to on Mr. Murdock's trousers as being those of urine, may have been caused by nitric acid. Mr. Murdock displayed an 1200 incapacity to enter into conversation with me. Mr. Murdock observed a reticence. He displayed no inclination to enter into conversation. I am in a position to state that I think I was there fifteen minutes. I did not time myself. I am acquainted with Mr. Charles Beamish. He is an intimate friend of my father's. I have known Mr. Beamish for several years. Mr. Owen asks "Is Mr. Charles Beamish an intimate friend of yours?" Mr. Weatherbe objects on the ground of entire irrelevancy. *Answer*:—He is an intimate friend of mine. Mr. Owen asks, did you and Mr. Beamish come down in the steamer together. Mr. Weatherbe objects on the ground of irrelevancy. *Answer*:—We did. Mr. Beamish and I talked this matter over a little once. I positively state that I had only one conversation with Mr. Beamish with regard to Mr. Murdock's will.

Mr. Owen asks—"Have you had conversations with Mr. Beamish with respect to this trial 1210 since coming to Lunenburg?" Mr. Weatherbe objects. Judge decides question shall be asked.

Answer:—Yes.

(Sgd.)

J. OUTRAM, Jr.

Sworn to before me at Lunenburg, in the County of Lunenburg, the 26th day of May, A. D. 1876.

GEORGE T. SOLOMON,
Judge of Probate.

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COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof of the alleged last will and testament in solemn form of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister, deceased, dated 1220 Fifteenth November, A. D. 1875.

The examination of Edmund J. Tobin, of Halifax, in the County of Halifax, Inspector of Fish, taken before me, George T. Solomon, Judge of the Court of Wills and Probate, and for granting Letters of Administration, within the County aforesaid, this Third day of August, A. D. 1876, who being duly sworn, deposeth and saith :—

(Mr. Owen objects to any further proceedings, owing to the Proctor on behalf of those opposing the will not having appeared yesterday, in accordance with adjournment.)

I was acquainted with the late Beamish Murdock almost from the time I was a child, but have been on very intimate terms with him for the last five years. I last saw him in Halifax in Spring of last year I think. Saw him in the street and at Mr. Beamish's house. I was always in 1230 the habit of calling on him when he came to town, since he has been living in Lunenburg. It was when he came from Lunenburg to see Mr. Beamish. Next time I saw him was in Mr. Kaulback's house in Lunenburg, on the hill. I have no recollection of seeing him last Summer. The time I saw him in Kaulback's house was about the 27th or 28th October, 1875. I always considered Mr. Murdock a very clever man—a remarkably clever man. He had the reputation of being a Lawyer in Halifax. I believe he published a history of the Province. He was a Queen's Counsel. I know by common reputation. I was in the habit of holding very long conversations with him, sometimes for hours, down to the time I last saw him in Halifax. He was one of the pleasantest men I ever conversed with—such a fund of information. He was one of those men, who talking on a subject, would place it very clearly before you. I hold the office of Inspector of Fish, under the Dominion 1240 Government. I visited Lunenburg in October 1875, on Government business. I asked Mr. Beamish to come down with me. I stayed at King's Hotel with Mr. Beamish. On the day we came to Lunenburg I saw Mr. Beamish at Kaulback's house. We did not go in company. To the best of my knowledge he left me to go to Mr. Murdock's. I resolved not to go away without seeing Mr. Murdock, and as soon as I had finished my business, went to see him. I simply went on a visit of friendship as an esteemed friend, and as a mark of respect to the old gentleman I had known so long. Mr. Beamish was at the house at dinner when I arrived there. They were all at dinner. Mr. Kaulback admitted me, and I sat in the other room till they had finished. I first saw Mr. Murdock coming into the library or bedroom in which I was sitting, from dinner. There was a bed in that room. It was a long room and rather narrow. It was what in town we'd call a 1250 small room. Here I suppose they'd call it a large one. It was large for size of house. They (Mr. Kaulback and Mr. Beamish) came in same room. I confess I was very much shocked to see the poor old man; I was shocked at his appearance.

Question.—Did he recognize you when he first came in the room?

Answer.—He didn't appear to recognize me at first; but after a moment he said, "Ah, Tobin, is that you? How are you?" He did not appear able to keep up any connected conversation. I tried it several times. Not at all like he was in old times.

Question.—What state of body was he in?

Answer.—Well, that shocked me more than anything else; he was always neat and natty in appearance previously. He came in and sat down in the arm-chair and I then noticed his 1260 appearance. I only saw his face and his hands. His face was unwashed, hair unbrushed, and nails dirty. That was my impression at the time.

Question.—Physically, what condition was he in?

Answer.—He was very feeble. I noticed it by his taking hold of pieces of furniture and steadying himself till he got to his chair. He took a pipe and lit it. He tried to keep it going. He was all slobbered over with spittle, and looked very disgusting, so much so, that I thought

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Mr. Beamish and Mr. Akins had better take out letters of guardianship, and look after him. I thought he was not able to take care of himself. I was not aware of his having any relations or connections, except those two. Mr. Beamish paid some mortgage or interest money, or something or other.

1270

Question.—How did he seem to regard the matter.

Mr. Owen objects.

Answer.—He didn't appear to care much about it. Didn't appear to take much interest in it as far as I recollect. Mr. Murdock handed it over to Mr. Kaulback. Mr. Kaulback counted it, as far as I recollect. I think Mr. Beamish handed it over to Mr. Murdock, before it was handed to Mr. Kaulback. Mr. Beamish did not hand the money to Mr. Murdock, after Mr. Kaulback counted it. I am certain Mr. Kaulback counted the money to see it was right. I don't know whether Mr. Kaulback handed it back to Mr. Murdock or not. Mr. Beamish asked Mr. Murdock about some legal paper, about some monies Mr. Beamish had invested for him, as far as I could make out. He said he didn't know where it was. He gave Mr. Beamish then the key of his boxes to look in them for it. These boxes were in the room we were in. He then examined them. While he was doing so, he complained to Mr. Murdock at not finding some papers he wanted. Mr. Murdock then said he had had a grand conflagration, and burnt up a lot of his papers a few days previous.

Question.—Describe his manner in making this statement.

Mr. Owen objects.

Answer.—He appeared very indifferent about his papers.

I don't think he appeared capable of doing business. I would not have liked him to do any for me. There were a number of books on shelves round the room. There was a bedstead near the door. I was sitting on the bed. He asked me to sit on the bed. The other chairs were occupied. Mr. Kaulback offered me his chair, but I preferred the bed. There was a table near the centre of the room. Mr. Kaulback sat there making up the calculation. Mr. Beamish didn't agree. They asked me to assist, which I did. Mr. Murdock was the only person who did not take part. I can't say who signed the receipt. Whether Mr. Murdock or Mr. Kaulback. The receipt was drawn out by Mr. Kaulback. I saw him write it.

Question.—Do you remember seeing Mr. Murdock write at all.

Answer.—No, I don't think he could write—he was nearly blind—said he had given up reading—that he couldn't see a letter. I couldn't say whether Mr. Beamish got the papers he was looking for. I took no interest in the matter. I was rather thinking of Mr. Murdock at the time.

Question.—Did you watch him closely.

Answer.—Yes. I was watching him very closely. I felt sad about seeing him so feeble and imbecile, so altered from what he always was. I think there was a clergyman came in the room, some one who was going away. He was talking about driving home. I didn't see any one else in that room. After I said good-bye to Mr. Murdock, went into the other room, and was introduced to Mrs. Kaulback, and remained there a few moments. I think Mr. Murdock drank something while I was there. I saw him take something out of a bottle once or twice. Mr. Kaulback asked me to take a glass of wine. I declined. I don't know whether this was in presence of Mr. Murdock.

Cross-examined by Mr. Owen:—

It was the last five years I was very intimately acquainted with Mr. Murdock. I say five years, but it may have been longer. I had spent hours with him at Mr. Beamish's house. Previously to that, I had not so much acquaintance as latterly; but since that I was more intimately acquainted with him than perhaps any one in Halifax, except Mr. Beamish and Mr. Aikins. I am forty-five years of age.

Question.—When did you first become intimately acquainted with Mr. Murdock.

Answer.—I couldn't tell exactly. I have been in the habit of taking dinner with him at Mr. Beamish's. My intimate acquaintance with him extended over the last five or six years.

Question.—How often, to the best of your knowledge, did you meet Mr. Murdock, after he came to Lunenburg.

Answer.—I did not always see him when he came to town. He did not come often. He came seldom, so far as I knew. Whenever I heard of his being in town, I invariably went to call on him. Mr. Beamish generally had a message for me, and informed me when Mr. Murdock came up. Mr. Murdock may have been in town, and I not aware of his having been there. I some-

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times called when I heard of Mr. Murdock being in town, without finding him at home, and usually left my card, or a message for him.

Question.—Have not you and Mr. Beamish been on extremely intimate terms for a number of years past?

Mr. Weatherbe objects on the ground of irrelevancy, and requires the Judge's opinion as to whether it's relevant or not.

Judge decides question shall not be put.

Question.—Have you frequently been in conversation with Mr. Beamish for many years past.

Mr. Weatherbe objects on ground of irrelevancy.

1330

Judge admits the question.

Answer.—I have. Nearly every day that he's in town. He's often away shooting and fishing about the country.

Question.—Were you in the habit of accompanying him on those excursions.

Mr. Weatherbe objects on same grounds as above. Judge admits the question.

Answer.—I was, until the last two years, but not more than with other people. I never was out shooting with him more than twice, but fishing hundreds of times. (This last was objected to by Mr. Weatherbe.)

Question.—You say that for the last two years you have not been on these excursions with Mr. Beamish, why was that?

1340

Mr. Weatherbe objects on grounds of irrelevancy. Judge admits the question.

Answer.—Sometimes it was not convenient for me to. Sometimes my health would not admit of it, and sometimes I had other engagements; but last Fall Mr. Beamish and I were shooting together on our way from Lunenburg to Halifax.

Question.—Then does the same intimacy exist as heretofore between Mr. Beamish and yourself up to the present day.

Mr. Weatherbe objects on same grounds. (Judge admits the answer.)

Answer.—Yes.

Question.—Have you had conversations with Mr. Beamish with respect to this matter.

Mr. Weatherbe objects.

1350

Answer.—I have.

Mr. Weatherbe objects in addition that he doesn't state what subject (subsequently to above answer).

Question.—Have you had conversations with Mr. Beamish with respect to the subject matter now in dispute.

Mr. Weatherbe objects on the ground that witness does not know what the matter in dispute is, and that the question is entirely irrelevant.

Judge admits the question.

Answer.—I have. I think I have twice or thrice. I came down with Mr. Beamish about 27th or 28th October, 1875, and went to King's Hotel same evening, where we dined. I couldn't say which left the Hotel first. He went in one direction, I in another. I next saw him at Mr. Kaulback's house, where Mr. Murdock was living. I thought I would find Mr. Beamish at Mr. Murdock's. We had made arrangements to go out shooting that afternoon.

Question.—Previously to leaving the Hotel on the occasion referred to, did not Mr. Beamish inform you that he intended going to Mr. Murdock's, and did you not meet him there by appointment, preparatory to going shooting.

Answer.—Mr. Beamish told me before leaving the hotel, that he had some business to transact with Mr. Murdock, and that he wouldn't be very long. I told him I'd like to call on Mr. Murdock, if Mr. Beamish were not back at the hotel when I returned from doing my business—that I would go on to Mr. Murdock's to meet him, and if he were back at the hotel, that we'd go out and see if we could get any birds, and I'd go up in the evening to see Mr. Murdock. He didn't return in time to meet me at the hotel. I think I have related everything that took place at Mr. Kaulback's, to the best of my knowledge. I never saw the will—only know there is a dispute about it. I have no interest in the matter, one way or the other.

Question.—Then, personally, you say you have no fault to find with the will.

Mr. Weatherbe objects that Witness has sworn he doesn't know anything about the will.

Mr. Owen withdraws the question.

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Question.—You having stated that Mr. Murdock complained of his sight being defective, and his not being able to read at the time you were at the house with Mr. Beamish in October, may not the fact of his not having counted the money, have been attributable to that cause? 1380

Answer.—Of course it might.

Question.—May not the fact of his not having written the receipt referred to, have been attributable to the same cause?

Answer.—Yes.

Question.—May not the fact of his not having personally made the calculations referred to by you, have also been attributable to the same cause.

Answer.—I presume it may have been attributable to this cause.

Question.—You stated that when Mr. Murdock entered the room and was going to his chair, he took hold of several pieces of furniture; may not the fact of his so doing also have been owing to his sight being impaired? 1390

Mr. Weatherbe objects.

Mr. Owen states that he shall not press the question.

Re-examined by Mr. Weatherbe:—

Mr. Owen objects to any re-examination by Mr. Weatherbe.

Question.—Mr. Owen spoke of fishing and shooting excursions, and conversations with Mr. Beamish,—did they influence you in giving your evidence in any way whatever?

Mr. Owen objects.

Answer.—Not in the slightest.

Question.—Did Mr. Beamish have any conversation with you, as to the evidence you were to give in this matter? 1400

Mr. Owen objects.

Answer.—He never referred to anything about what I had to say. He informed me that he had disputed this will, and that he felt very much aggrieved about it. He explained to me in some way as to how the money had been left, and I cared so little about it that I tried to turn the conversation several times. He told me of his bringing the action, and that he would require me for a witness. He never conversed with me about the evidence I had to give in this suit, and I told him I wouldn't go without a subpoena.

Re-examined by Mr. Owen:—

Question.—You stated in your re-examination that Mr. Beamish never conversed with you about the evidence you had to give in this trial. Did not Mr. Beamish refer you to the visit referred to by you at Mr. Murdock's, and to what took place on that occasion; if so, did he not ask you what you could prove with respect thereto.

Mr. Weatherbe objects to any re-cross-examination.

The Judge rules that Mr. Owen cannot enter into a re-examination.

Mr. Weatherbe withdraws his objection to the above question.

Answer.—On the contrary, I referred to him more frequently than he did to me, about the shameful condition in which Mr. Murdock was, and the sin of leaving him there in the neglected state in which he was.

Question.—On referring to this matter to Mr. Beamish, did you not then enter into conversation with him with regard to it? *Answer,* yes or no? 1420

Mr. Owen withdraws the question.

EDM. J. TOBIN.

Sworn to at Lunenburg, in the County of Lunenburg, this 3rd day of August, 1876, before me,

GEO. T. SOLOMON,
Judge of Probate.

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COURT OF WILLS AND PROBATE.

LUNENBURG.

In the matter of the proof of the alleged last Will and Testament, in solemn form, of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister, deceased, dated 15th November, A. D. 1875.

1430

The examination of Charles Beamish, of Halifax, in the County of Halifax, Gentleman, taken before me, George T. Solomon, Judge of the Court of Wills and Probate, and for granting letters of administration within the County of Lunenburg, this third day of August, A. D. 1876, who being duly sworn, deposeseth and saith:—

I have been acquainted with the deceased, Mr. Murdock, since my boyhood. He was a relative of mine; a cousin. His mother and my father were sister and brother. He was executor of my father's last will. My father died in 1821. Early in life I lived with Mr. Murdock; came to live with him when eleven years old, and went to school. He was then a lawyer; had just come to the Bar, about that time, and was a promising young man. He was married. He had means of his own. I think I lived a year and seven or nine months with him. He always resided in Halifax, 1440 to my knowledge, until he came to Lunenburg. He came to Lunenburg in July or August, '72. He was a member in legislature, representing Halifax, after I lived with him. He was always considered a lawyer in good standing. He was Queen's Counsel in latter years, before he came to Lunenburg; also the historian of Nova Scotia; he published three volumes of the History of Nova Scotia before he came to Lunenburg. I was not acquainted with him all my life. I was except three or four years, I was out of the city of Halifax. With that exception, I was most decidedly intimate with him all my life. Every day of my life almost I was in his house. He never resided with me; we lived about a mile apart in the city. My intimacy with him continued to the time he left for Lunenburg.

Question.—Did you assist him in making his arrangements?

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Answer.—I met him in the country for the purpose of assisting him to get a place in Lunenburg to reside in.

Question.—In business matters, what sort of a man was he?

Answer.—He was always considered a very correct man, very clear-headed and intellectual. His ability with regard to statistics and figures was very good.

Question.—State fully his mental and business capacity when he left Halifax?

Answer.—Mentally and physically he was considered a very clever man, from my own knowledge of him.

At the time I met him in Lunenburg, he decided to settle there. He purchased a place from Mr. Kaulback at that time. That was not when I was in Lunenburg. It was that season. I am 1460 not aware whether he had any previous acquaintance with Mr. Kaulback. I am not aware whether Mr. Kaulback had previously done any business for him as a lawyer. It was not the same place Mr. Kaulback now resides in. The price was \$1,600. I think he did not claim it until his death, but sold it, and purchased the property in which Mr. Kaulback now resides, in the autumn of '74.

Question.—Do you know with what object he sold the other property?

Answer.—There was some dispute between Mr. Kaulback and him; I don't know what. Mr. Murdock told me he bought the property from Mr. Kaulback for \$750. That is the house in which the Senator now resides, and in which Mr. Murdock resided when Mr. Kaulback and his family went to live with him.

At the time he came to reside in Lunenburg, I think he had about \$600 a year. He had got 1470 his funds together at that time. At the time deceased came from Lunenburg, he got about \$750 from Mr. Aiken of his aunt's estate. That has never been returned. Mr. Beamish Murdock was the administrator of that estate at the time. That was a portion of the principal that produced the \$600 income. He sold his property for \$11,500.00, which was in addition to the amount which gave

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him the \$600 income. That \$750 was Mr. Aiken's money. The estate had never been settled with the other heirs.

After Mr. Murdock came to Lunenburg, I visited him very often. I can give the dates of the last year; about the 1st day of June, about 27th September, again about 27th or 28th October, and again on the 13th December,—all in same year 1875. All that time he was living in the cottage in which he died.

In June, Mrs. Peck was living with him. I did not see her there in September or October. I think she had been living there from Fall '74.

I understood that Mrs. Peck's daughter was there 1st June. I did not see her, but understood so.

Mr. Murdock visited Halifax in April, 1875, and resided in my house all the time he was there, three or four days, can't say exactly when he came up. Sometimes he would stop three days, sometimes two, and sometimes one. He made a will on that occasion (in April) that produced marked (G. T. S.) is the paper. He made the will in my house dated 6th April, 1875. He wrote the whole with his own hand. It was not executed in my presence. It was not done in my house. He gave it to me afterwards in my own house. That G. T. S. Y. is the paper, I think. One end of the envelope was open. The direction is in his own hand writing. It was in that state when he gave it to me. Those words, "The last will of Beamish Murdock, April 8, 1875," were in his own hand writing. (The above papers were put in and objected to by Mr. Owen.) I think he left my house next morning. I did not see him between that time and June, when I saw him either in his garden or house, not sure which. I was in Lunenburg but a short time then. He was looking very miserable. Had been very sick and feeble. Mrs. Peck was nursing and attending to him at that time; I particularly saw her about him.

Question.—Did you make any arrangements with the nurse in June about communicating with you in case of Mr. Murdock's illness.

Mr. Owen objects on ground that any arrangement or conversation between witness and Mrs. Peck is not evidence, and the question is a leading one and suggestive of the answer.

Judge upholds objection not being relevant to the issue.

Neither Mr. Kaulback nor his family were living in the house at that time.

Question.—Did you observe any change in the mind of the deceased at the time. Since April.

Mr. Owen objects.

Answer.—Yes. In the first place, he was very feeble and could hardly walk. He told me his hearing was getting bad, his eye-sight was getting bad, and he was feeble both in mind and body. I observed this myself without his telling me. I had no business with him at that time. I think I called to tell him something about a bill of exchange. I was in Lunenburg about four or five or six hours on that occasion. I came in steamer and went to Bridgewater. I did not see Mrs. Kaulback on that occasion, except that I understood her daughter was there. I knew of no one but Mrs. Peck being there. She had sole charge of him, and in my opinion he was well taken care of. I don't recollect any conversation with Mr. Murdock when Mrs. Peck was present, but I had a conversation with Mr. Murdock in the garden. Mrs. Peck was in the garden some distance from us, but couldn't hear the conversation.

In September following I arrived at Lunenburg in the morning and went to see Mr. Murdock. I came to Lunenburg alone. I then found him in the same cottage, Mr. Kaulback and his family living there. I saw Mr. and Mrs. Kaulback, one or two children and one or two servants. Mrs. Peck was not there then. I saw no nurse or care taken of Mr. Murdock then. It was a small cottage, four rooms, including kitchen on first floor and the garret. He was always in the habit of living very respectably in Halifax, had comfortable, airy rooms; had one servant or more to attend to him. He was living with his aunt. Here he had a small, low room, I thought bed in it, and books on shelves in it. He had no other room to my knowledge. I understood Mrs. Peck had gone to Yarmouth at that time. Witness goes on to say what Mr. Kaulback said with regard to Mrs. Peck's being away.

Mr. Owen objects, not being evidence.

Mr. Kaulback said Mrs. Peck was obliged to put Mrs. Peck away because she had taken a stove and some spoons. I think I had enquired why she was absent.

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Question.—Do you recollect whether there was any other conversation at that time with 1530 Mr. Kaulback on that subject?

Answer.—I don't; I didn't leave town until the next morning after that. I think I came down in September to see Mr. Murdock about some papers, and about a release of mortgage. I think I obtained all that was necessary. I did not get the papers I wanted. The information I wanted was what I obtained that was necessary. Mr. Murdock had sold the house he had purchased in the Spring of '74. I don't know who acted as Mr. Murdock's attorney down to this period (Sept. '75). I never knew of Mr. Murdock's carrying on business as a lawyer, since the time he left Halifax in '72.

At this visit (in Sept. '75), I had very little conversation with Mr. Murdock alone. I wished to see him alone either in September or October, and made a remark of that kind to Mr. Kaulback. 1540 Whatever occasion that was, I think I saw him alone; I think Mr. Kaulback left me with him. I asked Mr. Kaulback if he would give me ten minutes' conversation with Mr. Murdock; latter said it was nothing private, he might remain; but Mr. Kaulback left the room. I don't recollect time Mr. Kaulback remained out. It might have been ten or fifteen minutes. On this visit in September, I found Mr. Murdock in weak state of mind and very childish. I saw Mr. Kaulback on this occasion. I can't recollect whether this was the only time I saw Mr. Murdock alone, with the exception of a few minutes. I think I had an interview with Mr. Murdock previously to the last will; only a short time. Mr. Kaulback asked me to dine with him, and after dinner asked me to dine with him, which I did. (Mr. Owen objects to any conversation between Mr. Beamish and Mr. Kaulback, or any statements made by Mr. Kaulback, the same not being evidence or pertinent to 1550 the issue). I dined with Mr. Kaulback in the kitchen,—with Mr. Kaulback and wife, some of the children, and Mr. Murdock. This was in Mr. Murdock's cottage. The first visit I made him, in June, I stopped at the hotel. I don't think Mr. Murdock had a room,—a bed-room. The accommodations were small. In September I drove out with Mr. Kaulback.

Question.—During that drive did you have any conversation with Mr. Kaulback with regard to Mr. Murdock's state of mind?

Mr. Owen objects question being suggestive of the answer.

Answer.—During that drive, I made a remark to Mr. Kaulback. After dinner, I walked down to Mr. Kaulback's office with him. I think we waited full half-an-hour there for the carriage to drive us out. The carriage was to be procured by Mr. Kaulback. He said you better come down 1560 to the office, and I walked down with him. After we got in the carriage, on our drive, the conversation was about Mr. Murdock. •Mr. Kaulback made a remark—he said there was two men from Halifax had signed a paper. He said he didn't know whether it was a will, or what it was. I said, "Well, Mr. Kaulback, you ought to prevent Mr. Murdock from making a will." I think I used the word wills. I said to Mr. Kaulback that Mr. Murdock had made his will, and left his wife half of his property, and some small legacies to her children. I also said I thought Mr. Murdock was not in a fit state to make a will just now. That if he made a will, it would be contested by Mr. Murdock's friends or relatives in Halifax. I don't recollect any further conversation about Mr. Murdock then.

Question.—Had you any conversation during that visit with Mr. Kaulback about any claim of his. 1570

Mr. Owen objects, on grounds before given, and in consequence of its being a leading question, Witness having already stated that he did not recollect any further conversation.

Answer.—Mr. Kaulback and I talked about woodcock, and the qualities of his horse, and how fast he travelled. We renewed our conversation about Mr. Murdock. Mr. Kaulback stated that Mr. Murdock had borrowed from him \$850.00. I asked Mr. Kaulback, what does he do with his money. He replied, I don't know what he does with it, but I'm obliged to keep people away from the house from coming to see Mr. Murdock, he would lend his money, or give it away. We came in from the drive. Mrs. Kaulback wished me to stop all night. I agreed to do so.

Question.—Why did you agree to remain all night?

Answer.—For the purpose of having conversation with Mr. Murdock. I proposed sleeping 1580 with Mr. Murdock. I said that I had often slept with him. Mrs. Kaulback said no, she would make me a bed on the sofa.

Question.—Did you have any conversation, or opportunity of conversation with him.

Answer.—I don't think I had on that occasion, to the best of my knowledge. I thought he acted very silly and imbecile on that occasion.

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Question.—Can you give me any instances.

Answer.—Not at that time.

I don't recollect what remark Mr. Kaulback made to me when I told him Mr. Murdock was not fit to make a will. I think he did not controvert my statement, to the best of my knowledge.

Question.—Would you remember if he had controverted your statement?

1590

Answer.—I think it very likely I should. I don't think he was capable of making a will at this time. He appeared to me to be perfectly simple as a child. I could compare him to nothing else but a child. His whole manner and appearance. The last time I saw him in Halifax, he appeared to be very smart and active, but here he appeared to be dull, heavy, silly in his behaviour, that is his manner, and was quite childish. I left about half after five in the morning, before any one was up. I did not say good-bye to him. In October, the next visit, I came in company with Mr. Tobin. I think Mr. Tobin asked me to come down, he had some business here, and I wanted to see Mr. Murdock. He was still living in same cottage with Mr. Kaulback's family. Mrs. Peck was not there then. I didn't see her. Mr. Murdock had no nurse or care taken then that I know of. There were one or two, or three children living in the house. Don't know how many servants. 1600 We dined in the dining room. There were a parlour, bedroom and kitchen beside, and a garret room over head.

I didn't see much change in Mr. Murdock at this time. In fact, I found no change; appeared to be living very fast. I think I spent the evening there. Mr. and Mrs. Kaulback asked me. I think Mr. Kaulback was at the house in the evening when I was there, and Mrs. Kaulback. I was alone with Mr. Murdock in the forenoon. We had a glass of whiskey together. I don't know what part of the house Mr. and Mrs. Kaulback were in when they asked me to come back. They were at the house on my visit in the forenoon. I was only a few minutes alone with Mr. Murdock. I think that, on that occasion, I had not more than a few minutes with him alone.

Question.—Can you give me any incident that happened on that occasion in the house, in the 1610 family, to show his state of mind.

Answer.—Yes; Mr. Murdock was wanting to visit Chester on this occasion. Mr. Kaulback was opposed to his going to Chester. He wanted to spend a fortnight there. Mr. Kaulback had promised to take him to Liverpool, and Mr. Murdock was opposed to it; wanted to go to Chester. In the evening, between 9 and 10 o'clock, we were sitting in the room,—(I and Mr. Kaulback's family.) Mr. Murdock came into the room dressed as for a journey. Mr. Kaulback said, "Why, Mr. Murdock, where are you going? You can't go to Chester to-night." Mr. Murdock walked out of the room without saying a word, Mr. Kaulback having used the expression, "go and take your things off." I don't know what he did after going out of the room. He came back and had taken his things off. It left an impression on my mind that his mind was not sane. He was going to Chester 1620 in the coach, I understood from Mr. Murdock. The coach went at 6 o'clock in the morning. Mr. Murdock expressed a wish in the afternoon to go in the morning by the coach. I told him Mr. Tobin and I were going down in the morning, and we'd take him down, he said no, he'd go in the coach. I think he was dressed in a shooting coat when he came into the room in the evening ready to go. I observed his socks were changed. He must have had shoes on, and his clothes were changed, I observed, at the time. And when he had left the room to come back I think his clothes were changed; I don't know whether his boots were changed. He did not remonstrate or say anything or object when Mr. Kaulback told him to go and take his things off.

Question.—Describe in what manner the transaction took place.

Answer.—I think in a bullying style on the part of Mr. Kaulback.

1630

Question.—How was it on the part of Mr. Murdock?

Answer.—Mr. Murdock went out of the room.

Question.—What was Mr. Murdock's manner and demeanor.

Answer.—He walked out of the room like a simpleton. After he returned he remained in the room during the evening. I don't think he took part in the conversation. I'm impressed with the idea that after he came back he asked Mrs. Kaulback to play. I don't know what he was doing while we were conversing in the room. I paid him a small sum of money. The only conversation I had with Mr. Murdock on this occasion about his money matters he appeared to be stupid about it; didn't appear to take any interest at all in his money matters.

Question.—How did he seem on this occasion to regard his money matters and interest in 1640 comparison with former interviews on business matters.

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Answer.—The only conversation I had with him about business matters in September was about this \$850 Mr. Kaulback had lent Mr. Murdock, which he acknowledged to me Mr. Kaulback had lent him. I asked Mr. Murdock about it when we were alone; don't think any one was present. Mr. Kaulback came in while we were talking and said to Mr. Murdock: "You know that I lent you \$850?" Mr. Murdock said "Yes" in a subdued and childish voice. I attended to collection of his money in Halifax for 25 years. He took no interest at all in his money matters on those two last visits. He took very little interest on those two last visits. On former times he was very brilliant and active about his money matters,—always looked very sharp after his interest.

On this October visit I inquired of Mr. Murdock for some old letters and old deeds. I did 1650 not get them; I got some three or four old letters. I did not get the deeds. He handed me the keys and told me to look in his boxes.

Question.—What did he say he had done with the old papers, (objected)?

Answer.—That he had borrowed the old papers, but not the old deeds. I did not get the deeds.

Question.—Did he appear to be in a fit state to make a disposition of his property?

Answer.—He did not. I didn't consider from the time I saw Mr. Murdock in the Spring, in June, that he was capable of conducting his own business. In handing some money to Mr. Murdock on that occasion, in October he wasn't capable of counting it, or making calculation of his interest. I asked Mr. Kaulback to make the calculation. He did so and it didn't agree with my 1660 statement. I asked Mr. Tobin, who was in the room at the time, to make it up; he did so, and it agreed with my statement. I handed the money then to Mr. Kaulback, I think, to count; to the best of my knowledge, he did so, and handed it to Mr. Murdock, who opened a little desk in front of him, and shoved it in. He made no entry of it; couldn't see to do so very well. Did it like a child with a toy. Didn't seem to take any interest in it.

Question.—Would you have undertaken to do business with Mr. Murdock without some one being present,—was he in a fit condition?

Answer.—Most certainly not.

My next visit was in December; I came alone. I was then in Lunenburg two or three days; arrived Saturday and left Tuesday. I had a statement of moneys I had invested for Mr. 1670 Murdock.

Question.—State briefly what passed between you, Mr. Murdock, and Mr. Kaulback, with regard to those papers in that business?

Answer.—I read the statement to Mr. Murdock; he appeared to be very indifferent about it. I then spoke to Mr. Kaulback and think I showed him the paper. He said he thought it would be necessary to have copies made of it for Mr. Murdock. During the morning Mr. Kaulback's daughter made a copy at his instance. He, Mr. Kaulback, appointed, I think, two or three o'clock to be at his house (Mr. Murdock's cottage). The paper was then read to Mr. Murdock and signed, witnessed by Mr. Kaulback, I think. When the paper was read, Mr. Kaulback said in a very coarse way, "Murdock, I thought you had more money." Latter replied, "I told you all I had," in a sub- 1680 dued voice, and appeared to be in terror. From the time I had cautioned Mr. Kaulback against Mr. Murdock's making any will, down to this point, he (Mr. Kaulback) had not informed me that any will had been made for Murdock. I didn't know at this time that deceased had made any will in November. Mr. Murdock at this time did not, I think, appear capable of understanding his acts. I think so from his feebleness of body and mind. Another instance for my thinking Mr. Murdock's mind was not sound was, he went up stairs for the purpose of getting some old family deeds, an old Chancery affair. Mr. Murdock and I went up in Mr. Kaulback's garret, where he had a number of old boxes and papers. We were hunting over the papers to get those old deeds, when I mentioned to Mr. Murdock, "You ought to be very careful what papers you sign for Mr. Kaulback." I think I made the remark, "A burnt child dreads the fire," Mr. Murdock looked up and said, "Damn it 1690 all or hang it all, I've left you half my property." I said, "Murdock, I don't want to hear anything about your will."

Question.—Did he seem to know that he had made a will, or indicate to you during that visit that he had made the November will?

Answer.—He did not.

Did he appear to be in a fit state of mind to appreciate or understand or remember such a document as that November will?

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Answer.—I don't feel inclined to answer that question, as I don't know what state of mind he was in in November.

Question.—I know you didn't see him in November. Was Mr. Murdock when you saw him 1700 with Kaulback's family in December in a fit state of mind to understand or remember, at that time, a document such as the November will?

Answer.—No, to the best of my judgment.

Question.—Did he remember at that time having made a will in November?

Answer.—I don't know.

Question.—What did he tell you about it?

Answer.—I had no conversation with him about the will at that time. We were up looking for papers. I was up looking for some old deeds in Mr. Kaulback's garret. I made a remark to Mr. Murdock about Mr. Kaulback. Mr. Murdock said hang it all, or damn it all, I've left you half the property. I think I said to Mr. Murdock I didn't want to hear anything about the will. Res-1710 ferring to a transaction that had previously taken place between Kaulback and Murdock, I said "a burnt child dreads the fire."

Question.—Had Mr. Murdock previously described to you the nature of that transaction between him and Kaulback, and had he referred to it afterwards, and if so, about how often.

Answer.—He did, but I couldn't say how often. Mr. Murdock described to me that he bought a property from Mr. Kaulback, I think, in summer of 1872. That he had also bought a property from Mr. Kaulback's father, two or three lots, I think; that Mr. Kaulback, after he had the property, told him he'd never ask for the money, he could pay it when he liked, at his leisure, and also that he had bought some furniture from Mr. Kaulback, and a piano. That Mr. Kaulback promised to give him the piano for forty pounds and charged him sixty pounds in the account that he wanted 1720 to settle up with Mr. Kaulback, and authorized Mr. Dowling to settle up the accounts. Also that he had given Mr. Kaulback two hundred pounds that he had never got credit for; that after the settlement was made between Mr. Murdock and Mr. Kaulback by Dowling there was some dispute arose between them, and I think he said the papers were burnt or destroyed in some way.

Question.—Who did Mr. Murdock say destroyed them?

Answer.—I think Mr. Murdock said he did it himself in a passion.

That Mr. Kaulback asked him (Mr. Murdock) for a confession of judgment and that he gave it to him with a promise from Mr. Kaulback, that he would not use it, but would put it in his desk. The amount of judgment was, I think, seven or eight hundred pounds. This judgment covered the property bought from his father as well as his own; that after he got the judgment he entered it 1730 up in Halifax on his way to Ottawa.

Question.—Did Mr. Murdock complain of this, and how often?

Answer.—Yes, very often.

The judgment, I think, was paid off by the sale of Mr. Murdock's property (his own real estate) in Halifax.

Mr. Owen objects to all conversation with Mr. Kaulback.

I had conversations with Mr. Kaulback about the account. I met him on the street, and made enquiries of him about it. I told him we intended to investigate the thing, and asked him where the accounts were, of the things he had sold Mr. Murdock. Mr. Kaulback said he didn't know where they were, that he couldn't furnish them, but thought they were destroyed. 1740

I wished Mr. Murdock to investigate the matter, and demand the accounts from Mr. Kaulback. Mr. Murdock declined doing it. Said he was an old lawyer, and would be laughed at for doing so silly a transaction as giving a confession of judgment. I had a conversation with Mr. Kaulback, I think, in September, in Lunenburg. He stated to me that Mrs. Metzler had rendered Mr. Murdock an account. I had sent Mr. Murdock, previous, to the best of my recollection, \$70. He owed Mrs. Metzler, an account. Mr. Murdock took fifty dollars of that, and went over and settled with Mrs. Metzler, as he thought, and took a receipt. Mr. Kaulback told me Mrs. Metzler's bill was for liquor. It appears that was not the whole of Mrs. Metzler's bill. I think it was about eighty dollars. This couldn't have been for a very long period, as he had not been in Lunenburg long. I think four or five months, may have been six or eight. When the bill came, it was 1750 credited, Mr. Kaulback told me \$50, on the bottom. That he, Mr. Kaulback, then enquired of Mr. Murdock for the receipt. Mr. Kaulback found the receipt. Mr. Murdock had it, and gave it to him.

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Mr. Kaulback told me that he couldn't imagine how Mr. Murdock could have had so large an account, as he himself had been supplying him with a large quantity of whiskey, about two gallons a week, I think, but won't say positively. At the time Mr. Kaulback told me this, he was living with Mr. Murdock, in Murdock's house, just before Mrs. Metzler's suit with Mr. Murdock. I think Mr. Kaulback said he had sold Mr. Murdock a cask of whiskey.

Question.—Was he (Mr. Kaulback) in the liquor trade at that time?

Answer.—I don't know. I don't know whether Mr. Kaulback paid any rent or not, or what their arrangements were.

1760

On this visit, in December, I had no difficulty in having access to Mr. Murdock, (after the will was made). I was with Mr. Murdock all the forenoon. Mr. Kaulback was at his office.

Question.—Did you find any difference in the facilities of access to Mr. Murdock's person, between the visit now in December, and the former visits while he was in Mr. Kaulback's family?

Answer.—I did find a difference when I paid him a former visit. I couldn't get him alone, and on this occasion, I was with him as much as I pleased alone. After his death, I came to Lunenburg, and found the corpse in the cottage, and neither Mr. Kaulback or his wife in Lunenburg. I found there a daughter of Mr. Kaulback's, (about 16 or 17 years old), and a servant, quite a young girl.

Question.—Had he any experienced nurse?

1770

Answer.—No. I didn't see any. I understood not. I don't know whether there was one with him during his last moments. I did not see the November will then, it was not forthcoming.

Question.—From September down to his death, from your knowledge of him, do you believe he was in a fit state to make a will?

Answer.—I think not.

Question.—During any period of that time that you saw him, was he in a fit state to understand or appreciate business matters?

Answer.—He was not, according to my judgment.

Question.—Had he anything like the intelligence or understanding he formerly possessed?

Answer.—I think not.

1780

Mr. Murdock was always a delicate man with a good constitution. When I say delicate, I mean he was a man who couldn't go through much hardship, or stand much fatigue. Yet I think he had a strong constitution.

Question.—From what you know of his former habits and constitution respective of his mental condition,—if he had been supplied with two gallons of whiskey a week, do you believe he would have been in any condition to understand the disposition of his property?

Answer.—I do not. I don't know what effect one gallon would have had. I am not aware that he had a large number of visitors. I don't know anything about it.

Cross-examined by Mr. Owen:—

Question.—Have you stated all you know with respect to the subject matter of this controversy having a bearing in connection therewith?

Answer.—I think I have.

Question.—Does anything now suggest itself to you, which you have not mentioned?

Mr. Weatherbe objects on ground of irrelevancy.

Judge allows question.

Answer.—No.

Question.—What induced you to contest the validity of the last will and testament of Beamish Murdock, dated November, 1875, and are you personally interested in setting that will aside?

Answer.—I contest that will because it was illegally obtained. I am personally interested in setting it aside.

Question.—In case you succeed in setting the will aside, what portion of Mr. Murdock's estate do you expect personally to obtain.

Mr. Weatherbe objects that it is an illegal question and irrelevant.

Judge decides question shall be put.

Answer.—What I'd be legally entitled to.

Question.—What amount do you expect to get?

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Mr. Weatherbe objects to the question.

Mr. Murdock first moved to Lunenburg in 1872. He went back to Halifax in May, 1874, to live. He resided there off and on till September, 1874. He resided with me during that time 1810 (between May and September, 1874). I don't know who recommended Mr. Murdock to move to Halifax on that occasion. I think it was in consequence of some dispute between Mr. Kaulback and Mr. Murdock about the judgment that had been entered up by Mr. Kaulback.

Question.—Under your oath, Mr. Beamish, did you not recommend Mr. Murdock's coming to Halifax on that occasion?

Answer.—I don't recollect having any conversation with Mr. Murdock previous to his making up his mind to go to Halifax.

Question.—Did you not, previously to Mr. Murdock moving to Halifax in 1874, recommend Mr. Kaulback to purchase Mr. Murdock's property in Lunenburg, and at the same time state to Mr. Kaulback that you had advised Mr. Murdock moving to Halifax? 1820

Mr. Weatherbe objects that the evidence is altogether irrelevant to the issue.

Answer.—I don't recollect the conversation. Such a conversation could not have taken place. When Mr. Murdock first went to Halifax, in 1874, he went directly to my house.

Mr. Weatherbe objects, being irrelevant.

Question.—Where was Mr. Murdock residing when he made the alleged will dated April 6th, 1875?

Answer.—At my house; he was there a few days at my house, and the day before he left he made that will.

Question.—Were you aware of his intention to execute that will previously to his doing so?

Mr. Weatherbe objects, being irrelevant. Mr. Owen withdraws the question. 1830

Question.—Had you any conversation with Mr. Murdock about making a will previously to the one executed April 6th, 1875?

Mr. Weatherbe objects, being wholly irrelevant to the issue.

Answer.—None whatever. After breakfast I think I was smoking my pipe in the dining room. Mr. Murdock was on the opposite side of my dining table. He asked me for some paper. I asked him what kind he wanted. He said large sized paper. He said he wished to make his will. That was the first I heard of it. I replied, why you have two wills already in my possession. He wrote that will at the table, I being at the opposite side of it. He told or read the contents of it to me before he took it out of the house. While he was writing it I think he conversed with me on the subject. I think he mentioned one circumstance. (Objected to as irrelevant.) 1840

Question.—What was the state of Mr. Murdock's mind at this time (April 6th, 1875)?

Answer.—His mind appeared to be perfectly clear.

Miss Henrietta Jane was residing with me at that time. She was not a relative of Mr. Murdock's. He had proposed to marry her in 1874.

Question.—Were you present when he proposed to her?

Answer.—He told me he had done so.

Mr. Weatherbe objects to above answer as irrelevant

Maria Beamish, my daughter, was a relative of Mr. Murdock. Mr. Murdock supposed her to be his first cousin. I should say she was his first cousin. (Objected to as irrelevant.)

Question.—If your daughter is first cousin, what relation did you bear? 1850

Mr. Weatherbe objects, being trifling and irrelevant and a trap question.

Judge allows the question.

Answer.—I refuse to answer the question.

Question.—Were you in any way related to Mr. Murdock, and if so in what way.

Mr. Weatherbe objects being irrelevant.

Answer.—Answer the last question fully, giving the reasons as thereby required.

Objected to as irrelevant, and as calling for reasons instead of facts.

Judge admits the question.

Answer.—There was a doubt on my mind, when a boy, whether I was legitimate or illegitimate, till a friend of the witnesses, a Mr. Mickle, came to my office and made a statement. He stated 1860 "that he and a friend, or the brother of my mother, when my father, (Frederick Otto Beamish) came to the county of Lunenburg, to a place called Blandford. My mother came with him. Mr.

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Mickle and Mr. Langille went over to Chester and brought a clergyman, and they were married. I then, a short time afterwards, went to Chester to see the record. I found that the books of Record (from 1800 up to 1805, I think,) could not be found.

Mr. Murdock returned to Lunenburg the day after executing the will of 6th April, '75. I next saw Mr. Murdock in June, '75, in Lunenburg; came down by steamer, and arrived about 12 or 1 o'clock. I think it was first day of June; I think I left in the afternoon of same day, about 2 o'clock, for Bridgewater. I dined at King's Hotel, in Lunenburg, that day. I went up to see Mr. Murdock before dinner. I think I found him in the garden. Mrs. Peck and he were there. I remained with him, I suppose, half-an-hour. Mr. Murdock was going down to Mr. Kaulback's. The Kaulbacks were not then living in Murdock's house. Mr. Murdock was looking at his plants, I think, when I got there. I had not any business with him on that occasion. I don't think I entered into any business discussions with him on that occasion. I'm not aware of any. Mrs. Peck was not in a position in the garden to hear our conversation. I think I didn't see Mr. Murdock after dinner. I walked down as far as Mrs. Kaulback's with him. He took my arm and was very feeble, and he wished me to go there with him but I declined. I was only in Lunenburg on that one occasion in June. Mr. Murdock had been for sometime suffering from weakness of the joints. I don't recollect that he complained of his ankles being weak. He complained of his legs being weak. I don't know whether he complained before coming to Lunenburg. I couldn't say how long after. When Mr. 1870 Murdock was living with me in Halifax, he complained one day, when walking with me, of his legs being weak, and that he couldn't get on so fast.

Question.—When Mr. Kaulback was in Halifax, in April '76, at the time of making the will there, referred to by you, were not his legs and ankles then weak, and had he not then a difficulty in walking?

Answer.—I didn't see anything remarkable in his gait. He did not complain. He was always a tottering man in his walk, since I recollect him.

His urinary organs were weak since I remember him. He told me he had ulceration of the bladder from a boy. He was obliged to make water very often. I don't recollect whether Mr. Murdock was in the habit of taking my arm when walking in Halifax. He was not in the habit, but 1890 might have done so. I next came to Lunenburg about 27th Sept., I think I reached there about eleven or twelve o'clock. I remained until I left next morning for Halifax.

Question.—Did you on that occasion request any private interview with Mr. Murdock which was not allowed?

Answer.—I did not.

I asked Mr. Kaulback, I think, in October to allow me to have a private interview, which was granted. I never made a request of that kind which was not granted. Mr. Murdock's library and bedroom were combined. I take it for granted that was his own private room. If I had requested a private interview with him there I've no doubt I would have got it. I think I came down in September about a release of mortgage. I think I talked that matter over with Mr. Murdock. He said if I'd 1900 send it down he'd sign it. Mr. Hartshorn sent it down and Mr. Murdock executed it. I can't say exactly how long after. It was done before I came down in October. During my visit I had two or three private interviews with Mr. Murdock. I don't recollect talking over other business matters with him in September, but I asked him for some papers. I think I did not get them. I again visited Mr. Murdock in October; I think 26th or 27th. I came in the steamer in company with Mr. Tobin, and arrived about 12 o'clock. We remained that afternoon and started next morning. I think I had two dinners on that occasion at the hotel and afterwards at Mr. Kaulback's at Mrs. Kaulback's request. Mr. Murdock was quite blind at that time, so he stated he couldn't see to write or read. I had a small sum of money to give him, and wanted to get some chancery deeds of the property. I paid him the money; I am not quite sure Mr. Murdock signed the receipt. Mr. Kaulback drew it, 1910 I take it for granted, at Mr. Murdock's request. Mr. Murdock himself could not, I think, see to write it. This business was transacted at Mr. Kaulback's after dinner in the library or bedroom. I don't think Mr. Murdock understood the nature of that transaction. He didn't care about it, and appeared to be quite indifferent.

I won't undertake to swear he didn't understand the nature of the transaction. I wouldn't care about doing business with a man who couldn't understand the nature of a transaction. I did not

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sleep at Mr. Kaulback's house on that occasion in October. I spent the evening there. I referred, on my direct examination, to Mr. Murdock's having changed his dress on the evening I was at Mr. Kaulback's house in October. Mr. Murdock came into the room that evening about 9 or 10 o'clock. I observed that he was dressed with a coat (a shooting coat), shoes on his feet, and I think I saw his 1920 stockings. I won't undertake to say that Mr. Murdock had not the same pants on then that he wore the afternoon, but there was a change in his dress. The shoes were nicely brushed. I should think he had not the same shoes on then as in the afternoon. They may have been the same shoes cleaned. The coat was of a dark colour; Mr. Murdock had a variety of coats. He generally wore dark. I think he had two or three of those hunting coats. I think he was not dressed the same as usual when he came in the room that evening by the conversation. If it had not been for conversation referred to by me, I would not have noticed the change in his dress. He was not dressed the same when he came into the room; he was dressed as if going into the country, away from home; better dressed than usual. He might have had that coat on during the day. It wasn't the same coat he wore when he first came into the room, and was told by Mr. Kaulback to go and change his clothes. When Mr. 1930 Kaulback came into the room (between 9 and 10 o'clock), Mr. Kaulback told him to go and change his clothes. Mr. and Mrs. Kaulback, some of the children and myself were there, I think. I offered to drive Mr. Murdock to Chester on that occasion. He declined my offer, and said he would prefer going in the coach. I told him Mr. Tobin and I would get a carriage and drive him through to Chester. He declined. I was in Lunenburg in December, about the 13th. I received some letters from Mr. Murdock between April and December in Mrs. Kaulback's or her daughter's hand writing. I think I received letters up to first of September in Mr. Murdock's hand writing. The first letter I received was written by Miss Kaulback and the other by a lady, I think Mrs. Kaulback. I have those letters in my possession, I brought them with me.

(Mr. Owen asks that the letters be produced.)

1940

(Mr. Weatherbe says no notice has been given.)

I did not see Mr. Murdock from about 27th or 28th October to 18th December. He was about in the same state in December as in October. I remember Rev. Mr. Norwood and Mr. George Ross, of New Ross, being at Mr. Murdock's in October. I was introduced to them by Mr. Murdock, I think. I went over some business transactions on 13th December with Mr. Murdock. Those were the same as before mentioned. Mr. Murdock and I were alone for some time in the library on that occasion, and up in the garret.

Question.—About how long were you and Mr. Murdock engaged in business when alone on that occasion.

Answer.—I came over in the morning about ten o'clock, by agreement with Mr. Kaulback, I 1950 think. I was there with Mr. Murdock alone, I can't say how long. I read the account over to him. Memorandums of what I had done with his money and bank deposit receipts. When I read the papers over to him he did not express satisfaction or dissatisfaction. His mind was in that state it wouldn't allow it. I think I handed the statement to Mr. Murdock. I didn't consider he was capable. In the first place he was blind; in the second place I didn't consider him capable.

There was wharf property in Halifax owned by Mr. Murdock, Mr. Aiken and myself. The nature of the business I transacted for Mr. Murdock in Halifax was this: After Mr. Murdock left Halifax he gave me a power of Attorney to transact his business. I received his rents of the property owned by Mr. Murdock for Mr. Aiken and myself. The whole property was not rented to one person. There were a number of tenants. On visiting Mr. Murdock in December, I had no settle- 1960 ment with him. The whole thing is in writing and will speak for itself. If you'll allow me I'll explain the nature of the settlement in a few minutes.

Question.—Have you the written statement or settlement, or statement referred to.

Answer.—I have not, either here or in Lunenburg. The statement was signed by myself and Mr. Murdock.

Question.—When was it signed.

Mr. Weatherbe objects; papers should be produced or proper means taken to produce same.

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Answer.—It was signed 13th December, 1875, I think. The copy of same referred to in my direct examination was also signed by Mr. Murdock and myself. There were two original statements in duplicate on that occasion, both signed by Mr. Murdock and myself. I merely made a 1970 statement of Mr. Murdock's money that he had in the bank; in investing them (I invested them,) the statements were read over to Mr. Murdock.

Question.—Was he satisfied with them?

Answer.—The only remark that he made was, that he was satisfied with anything I done. Mr. Kaulback said to Mr. Murdock that he thought he was a richer man and had more money, and Mr. Murdock replied in a subdued voice, I told you all I had, or something to that effect.

Mr. Owen objects—the last portion of his answer not having been elicited by him.

Question.—You referred to Mr. Murdock having made proposals to Miss James,—when was that and what was the result?

Mr. Weatherbe objects, being irrelevant.

1980

Answer.—I think it was in 1873. She did not accept him. If my daughter was related to Mr. Murdock, she was his second cousin. Mr. Aikens stated to me that he had given Mr. Murdock \$1,400 for the purpose of making up an income for him.

Objected to by Mr. Weatherbe, not being evidence.

Judge decided that above answer should be taken.

Question.—You stated on your direct examination that Mr. Murdock got from Mr. Aikens \$750, do you know that of your own knowledge?

Answer.—No further than what Mr. Aiken told me. I didn't see the account, and therefore I don't know. Mr. Murdock told me the same thing.

Mr. Murdock told me that immediately after the settlement of his aunt's estate in the Spring 1990 of 1872. He told me half a dozen times.

Mr. Murdock always spoke of the kind acts of Mr. Aikens to do that for him.

Question.—Had he referred to Mr. Aiken presenting him with that amount of money?

Mr. Weatherbe objects, there is no evidence of presenting him with an amount of money; and a trap question.

Answer.—Most decidedly it was in reference to the amount of money that was given by Mr. Aikens.

Question.—You have already stated that Mr. Murdock returned to Halifax in May, '74, and returned to Lunenburg in September; how came he to leave Halifax and take up his residence in Lunenburg at that time?

2000

Mr. Weatherbe objects.

Answer.—Well I don't know any reason, only he liked Lunenburg. He always liked it and spoke of it in his History as an old place before he came here at all. He lived with me from May to September, '74, while in Halifax. When he went to Halifax, in May, '74, he thought he would remain in Halifax permanently.

Question.—You stated in your direct examination that Mrs. Kaulback told you Mr. Murdock discharged Mrs. Peek in consequence of her having stolen some spoons and a stove. When, where, and in whose presence did Mr. Kaulback make that statement?

Answer.—He made that statement in September. Don't remember where or in whose presence. It was after Mrs. Peek had left Mr. Murdock.

2010

Question.—Did you not state that you intimated to Mr. Kaulback for the first time when driving in September, that Mr. Murdock had made a will in April.

Answer.—I did

Question.—Did you not inform Mr. Kaulback in Halifax about the last of April, '74, on his return from Ottawa, that Mr. Murdock had made a will and gave him the general contents of it?

Answer.—No; I don't recollect having any conversation with Mr. Kaulback about the will, except on the drive.

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Did you meet Mr. Kaulback in Halifax on that occasion on his return from Ottawa?

Answer.—I don't recollect seeing Mr. Kaulback then.

(Sgd.)

C. BEAMISH. 2020

Sworn to at Lunenburg, in the County of Lunenburg, the 7th day of August, A. D. 1876,
before me,

(Sgd.)

GEO. T. SOLOMON,
Judge Probate, Co. Lunenburg.

COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

Evidence of Catherine Peck, 17th day of August, A. D., 1876.

I know the late Beamish Murdock, and the cottage on the hill where he lived and died. I was born there. I will be seventy years of age next June. He was an old man. I think we were nearly one age. I don't recollect his age exactly. He was a feeble old man.

2030

Question.—About what time did you go to nurse him?

Mr. Owen objects, witness not having stated she went to nurse him.

Answer.—I went in the fall; I remained with him all winter till I was turned out. No person lived with Mr. Murdock, except myself and daughter, while I lived with him. I took care of him. He did not turn me out. He employed me to live with him as long as he lived. I was to have my house then; that was when he first engaged me. When I lived at the hotel (King's) with Mr. Murdock, he asked me to come and live with him and take care of him, and I should have a house as long as I lived, and should never want after his death. I was then engaged at the hotel and left it on that understanding. Mrs. Kaulback turned me out.

(Mr. Owen objects, being irrelevant and not evidence.)

2040

Question.—What state of mind was he when you were turned out?

Answer.—In a poor state of mind. He had no recollection of anything. From the time he engaged to give me a home down to the time I was turned out, he never complained of my treatment to him or of anything.

Question.—Or did any person on his behalf or otherwise complain of your conduct towards him, or your treatment of him in any way?

Mr. Owen objects; not being evidence.

Judge allows the question.

Answer.—No.

Question.—At any time till you were turned out?

2050

Mr. Owen objects.

Judge admits the question.

Answer.—No. I recollect when Mr. Murdock went to Halifax in the spring, about April, and when he returned—

Question.—Had he been sick through the winter, previous to that?

Answer.—Yes; off and on. He had got a little better at that time, when he went to Halifax. Within a month or two of the time I was turned out, he was very feeble-minded and childish, and I had to watch him day and night. With regard to his eating dinner that time, he didn't care what he got nor what I made him.

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Question.—Did he seem to have any choice?

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Answer.—None whatever. Previous to that when he was well, he liked soup.

Question.—Who dressed him during the whole of that time?

Objected to as leading.

Answer.—I undressed him; I dressed him nearly the whole time.

Question.—I want you to state fully what you had to do with him, and how you had to treat him, with regard to dressing him and cleaning him?

Objected to, witness not having previously referred to cleaning him.

Answer.—Well, his person, it was like as if you would wash a baby, clean a baby.

Question.—How often?

Answer.—Most frequently.

2970

Question.—Was he conscious of the calls of nature himself? Did he know, or could he control himself?

Objected to, being embraced in the last general question.

Answer.—Not at all times.

Question.—How was it with regard to his bed? and explain any conversation you had with him on the subject?

Answer.—He used to go to bed. I used to put him in bed. When he went to bed he would call me. I used to sit in his bedroom in the evening. I used to undress him, and turn down the bed for him, and put out his light; and if he wanted to make a little fire or anything, I had everything ready, and he would call. He'd knock with a stick.

2080

Question.—How was it in the night?

Objected to as irrelevant and leading.

Answer.—I'd never undress exactly. I'd always be on the watch. He would get up and walk through the house; wander sometimes through the house; and I would get up, and come down, and see what he wanted. He would be looking for a book, or something, and he would say, "Oh, well, never mind it! I'll go to bed again, Mrs. Peck;" and I'd see him up-stairs.

Question.—On other occasions, what would he say?

Answer.—He would say, "never mind it," or something like that.

(Go on, Mrs. Peck.)

Mr. Owen objects, question being fully answered.

2090

Question.—Explain fully with regard to his roaming about the house?

Objected to.

Answer.—Well, he was going about the house; didn't know what he was doing! would ask him why he was going about the house, and what he was doing. He wouldn't make me much of an answer.

Question.—Did he on any other occasion refer to his clothes? Just state what passed between you?

Answer.—He told me one night they were all ghosts; that I should go and feel them whether they were men or his clothes. I heard him in the night, and got up, and came down; and it was often. I came down, and so found him, that he asked me to see if they were ghosts. I felt them all round, and showed him and satisfied him that it was his clothes, and he got reconciled; still seemed kind of frightened like, excited, and I sat up with him awhile—an hour and a-half or an hour—talking, and then he would go to bed. I went also to bed up in my room.

Question.—Well, during those two months previous to your being turned out, how was his memory?

Answer.—Very poor, indeed!

Question.—Give us some example?

Answer.—If he put anything away he couldn't find it; if he laid a paper down, he couldn't find it. He called me to come and help him look for it. It made no difference what it was, he very seldom could find his things. He had a large gold watch with seal and chain. He mislaid that twice while I was there, and couldn't find it, and called me to look for it twice.

Question.—How long previously had he mislaid it?

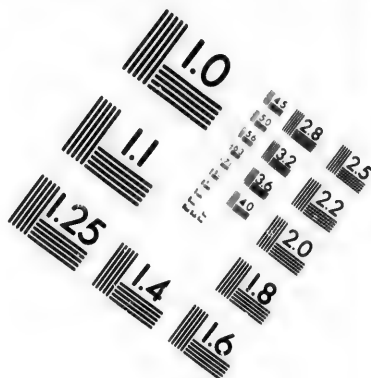
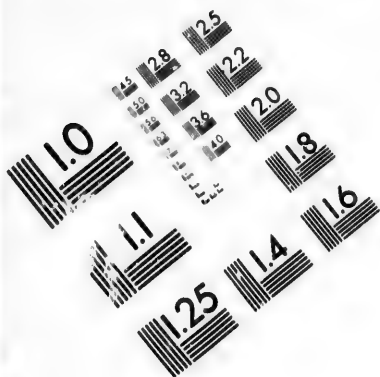
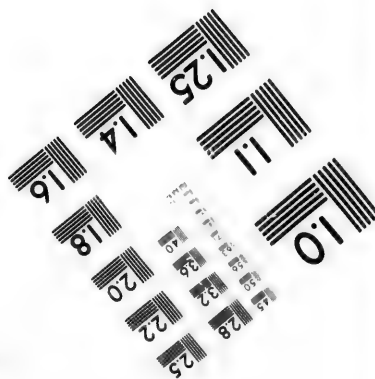
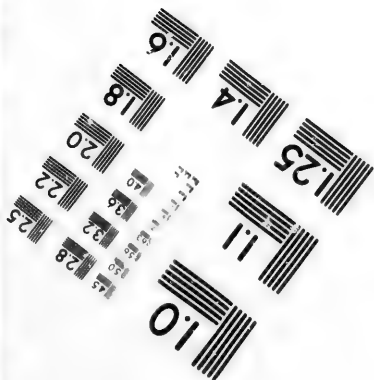
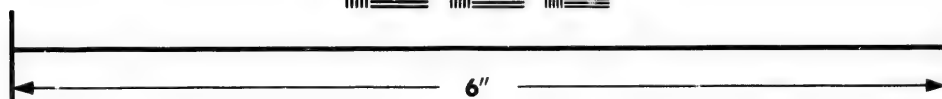
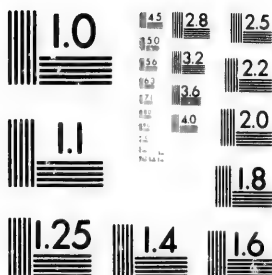


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Answer.—Nearly all day one time; and he had let it lay in the water closet. It was in the night he asked me to look for it, and I went down with a light.

Question.—Now about the garden?

Answer.—He would work Sunday or Monday, or any day that came along. He didn't know Sunday from Monday. I'd coax him to come in, and tell him he should come in and shouldn't work on Sunday. He'd say he did not know it was Sunday, and supposed he'd have to come in, after a little smoke of the pipe. He'd go out again. He would begin to weed with his basket and little trowel. I'd go and coax him to come in and sit down and he'd come after a little persuasion. I'd tell him the people were all walking about and they would see him. We seen him go out in the garden before breakfast on Sunday morning weeding, when I'd just be out of bed. He was very fond of the garden.

Question.—Did he ever lose his things in the garden?

Answer.—Yes; his basket he'd lose and I'd go and find it, and this trowel, and I'd look till I did find it. I remember one day that he fell down in the garden, and I didn't know what became of him, and I went and looked, and he laid in among the potatoes on his back and couldn't get up till I helped him, and I got him up into the house and brushed his clothes, and he washed himself and smoked his pipe, and took a nap. It happened twice or three times that he fell.

Question.—Did you talk to him about it on each occasion?

Answer.—Yes; he was in the habit of asking me what day of the week it was often. 2130

Question.—Do you recollect his writing and sealing a letter to be sent away to the Post Office?

Objected as leading and irrelevant.

Answer.—Yes. I had charge of him at that time. It was just shortly before I was turned away. It was sealed and directed by Mr. Murdock. A couple of hours after the letter was written Mr. Kaulback came in the house. It was lying on the table to go to the Post Office. I was to pay for it. It made no difference so long as it went there, who took it. It was addressed to Miss Crow, I think, Chester. She was a music teacher. That's all I know about her. She may have been young, or she may have been old. I heard nothing of her from Mr. Murdock. Mr. Kaulback opened the letter, broke the seal and read it. Mr. Murdock wasn't home at the time. I don't know what was in it. He, (Mr. Kaulback) burnt the letter. 2140

Mr. Owen objects to anything Mr. Kaulback said or did, not evidence.

Mr. Kaulback didn't say anything to me about it, nor did I ask him. Mr. Kaulback said the letter was childish. Mr. Murdock never asked whether the letter had gone to the Post Office and that was the last I ever heard of it.

Mr. Murdock was in the habit of using liquors. Senator Kaulback supplied him. He (Mr. Kaulback) brought the liquors to Mr. Murdock's house, after night, on his back, in a jug. Pretty often, and always after night, once in the daytime, he sent his man. The jug was nearly as high as my knee—about two gallons. I don't know whether twice, or every week. Rye whiskey; kept him supplied all the time. The old man had a case of champagne, which was kept in Mr. Kaulback's possession. Mr. Murdock said he had a case of champagne at Mr. Kaulback's. He sent me once for a bottle. One time he told me he wished Mr. Kaulback would bring that champagne up; that he, Mr. Murdock, had bought it. I didn't know the particulars, why he didn't bring it. His office (Mr. Kaulback's) was in his house at that time. When Mr. Murdock sent me for a bottle, I went to Mr. Kaulback's office. And then, on another occasion, Mr. Murdock sent me down for two small bottles he had given me. I had company that evening, in the house where Mr. Murdock was. He was sitting with us. I got the bottles, and he drank some of it.

Mr. Owen objects to any conversation between Mrs. Peck and Mr. Murdock, not being pertinent to the issue.

I asked Mr. Kaulback for the bottle in his office, and he went out of his office, down into the cellar, and got it, I told Mr. Kaulback that Mr. Murdock sent me down for a bottle of his champagne. My daughter went to Mr. Murdock's after I did. I was there some time before she came. Mr. Kaulback brought whiskey. About 5 or 6 times, and may be more, to my recollection. It was always rye whiskey. He used to put it sometimes on the kitchen table, sometimes in his bed-room, whichever place was open. Sometimes Mr. Murdock would be sitting in his bed-room. He would put it on the floor of the bed-room, and would say, here is the whiskey, or here is the jug. The old gentleman never made any reply.

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Question.—Would he come personally and make any arrangement about it?

Answer.—No. He would tell Mr. Murdock that he would bring up so and so (that meant the whiskey). Mr. Murdock would say nothing to Mr. Kaulback. To me he said he did not want Mr. 2170 Kaulback to bring it, he could buy his own liquor. Mr. Kaulback didn't furnish any account with the liquor. I saw Mr. Murdock give Mr. Kaulback some money,—don't know how much—Mr. Murdock took it out of his trunk. Mr. Kaulback asked Mr. Murdock for the money, he made no answer but went to his trunk and got it and gave it to Mr. Kaulback. It was notes. Mr. Kaulback and Mr. Murdock counted it together. It was all there was but one note. It looked like heavy money and a good many notes. There were no writings passed between them on occasion that I saw. I would have seen it if there had been. I saw all that passed, there was no receipt given by Mr. Kaulback. I heard Mr. Kaulback say to Mr. Murdock if he wanted any money he'd give him some. Mr. Murdock had got this money from Halifax a few days before.

Nothing was said about the keeping of that one note back. I'm sure Mr. Murdock said 2180 nothing when Mr. Kaulback asked him for the money but went to his trunk and got it.

Question.—When Mr. Kaulback told Mr. Murdock he would let him have some money, had Mr. Murdock asked him. (Objected to by Mr. Owen.)

Answer.—No, he had not. Mr. Murdock said nothing that I heard in reply to the offer of money by Mr. Kaulback.

Question.—Did Mr. Murdock take any other part in those proceedings except to assist in counting it.

Answer.—He and Mr. Kaulback counted the money between them. He just did as Mr. Kaulback told him.

Question.—At the time Mr. Kaulback came into Mr. Murdock's house, broke open the seal 2190 and read the letter, did he wait till Mr. Murdock came in?

The above objected to by Mr. Owen as not pertinent to issue.

Answer.—No, he didn't wait. He went out the hall door, I could not tell where.

Question.—Did he state that he had any other errand on that occasion?

Answer.—No, he did not. He did not return again that day. I did not tell Mr. Kaulback that Mr. Murdock said he had better send up his champagne. I never saw any more of Mr. Murdock's champagne than what he sent me for. Never saw any other come into the house. Mr. Kaulback brought none when he came with the whiskey, that I saw.

Question.—Previous to your being turned out of Mr. Murdock's house was Senator Kaulback in the habit of coming to the house? 2200

Answer.—He was frequently. Sometimes he would come in and give the old man a shake of the shoulder, rouse him up if he was asleep. He was not in a very good condition then, sleepy lying at rest, and when he would shake him that way he'd say: oh, don't Kaulback.

Question.—How would Mr. Kaulback reply?

All objected to by Mr. Owen.

Answer.—He'd say hurry up and get dressed and come out. He was sometimes in the habit of taking him out of the house to his own house; sometimes he did not care about going, would rather stay at home. Besides the money Mr. Kaulback got from the old man, he (Mr. Murdock) sent money by me, two or three times, to Mrs. Kaulback in a note. I couldn't say whether Mr. Kaulback knew anything about that. Mr. Murdock told me he was going to send Mrs. Kaulback some money 2210 on those occasions; that Mr. Kaulback would not give her a cent of money to spend, and he pitied her. I delivered the money to Mrs. Kaulback; she kept the money and read the note. I heard Mrs. Kaulback talking to Mr. Murdock about the money, and saying that Henry wouldn't give her a cent of money to spend, and she had none. In fact they all got money, from the youngest to the oldest, they were like what they call these blood-suckers. After Mr. Kaulback's house was burnt, Mr. and Mrs. Kaulback and their children (latter did not sleep there but came to eat.) Mr. Murdock on no occasion told me or suggested that I should leave the house. Mr. Murdock thought they came to stay for a few days only. They had not been there more than three or four days when I found I had to leave. I heard them whispering about it and that's the way I found it out. I heard

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Mr. and Mrs. Kaulback and Mr. Murdock whispering together. They whispered to Mr. Murdock 2220 how they would manage to put me out.

(Mr. Owen objects to anything that Mrs. Kaulback said or did, not being evidence or pertinent to the issue.)

Question.—Did you have a conversation with Mr. Murdock about the Kaulback's being in the house?

Answer.—After and before the whispering I told Mr. Murdock he would be very uncomfortable in his book-room, to sit in and read and sleep in. He himself found himself uncomfortable, and said: Mrs. Peck what can I do. We got entangled and how am I to get out of it. And that he thought it was only going to be for a few days, and that he did not dream that they were going to take possession. Then I said, Mr. Murdock there is so much quarreling and fighting here; for Mrs. Kaulback 2230 is always fighting, both him and her; and he said, what can I do. I said, as long as I was married I never heard so much fighting and quarreling. I never saw so much fighting in all my days. He said it was a thing he wasn't used to and didn't like to hear it, liked to live peaceably and quiet.

(All objected to by Mr. Owen.)

Question.—Do you know then why he didn't take possession of his house and live peaceably and quietly?

Answer.—Because they tormented him to come there. He, the old man, was at this time in a poor condition of body and mind, and didn't know what he was doing when he took them into his house. I heard Mr. Kaulback himself say that Mr. Murdock was'n't fit to do business. Mr. Kaulback came into the kitchen, after they had moved into the house, and told me that Mr. Murdock was 2240 not fit to do any business any more, that any one could cheat him, who ever wished to. My daughter was present when he said it. Mr. Murdock was at that time out walking with Mrs. Kaulback. I don't know where they were walking exactly.

Question.—On what terms were Mr. Murdock and Mrs. Kaulback?

Mr. Owen objects, not being evidence or pertinent to the issue.

Answer.—They were on splendid terms.

Question.—First describe more definitely.

(Objected to as above.)

Judge decides question shall be put.

Answer.—I saw them sitting in Mr. Murdock's bedroom together. I saw them drinking 2250 whiskey or brandy together; cannot say exactly. They were sitting rather cozy. If Mr. Murdock had been a young gentleman I would have thought they were courting. She always seemed to be very happy in his company.

Question.—Describe all you saw fully.

(Objected to as before.)

Answer.—I saw Mrs. Kaulback and Mr. Murdock kissing. This was after they were living at the house, when I saw them kissing. She had been with him before in the bedroom before they came to live there.

(Under the understanding of the Judge of Probate, the preceding question is allowed to be put not for the purpose of showing undue influence on the part of either Mr. or Mrs. Kaulback.) 2260

(Mr. Weatherbe claims to use hereafter the evidence, so far as it can be shown to be legal evidence, under the issue.)

Question.—How often?

Objected to as above.

Answer.—Several times.

Question.—First state what happened on those occasions; who took in the tumblers, and so on?

(Objected, nothing having been said about tumblers being taken in, and for same reason, as before.)

Answer.—I took in the tumblers and decanter for Mr. Murdock, and at his request I came 2270 out and Mrs. Kaulback pushed the door to. They remained there a considerable time talking; I don't know what passed. This occurred several times before they came to live, and I saw them often in the book-room; Mr. Murdock used to call it his book-room.

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Question.—How would the old man speak of Mrs. Kaulback.

Answer.—In a very childish way, foolish.

Question.—Was this before or after you had to clean him like a baby?

(Objected to.)

Answer.—Before; and it was before they came to the house to live that I had to clean him like a baby.

I was there sometime before he got so childish. It was not very long before I left that I had 2280 to clean him like a baby; about two months. He did not get much better before I left.

It was some two or three months before I left that he used to talk foolish about Mrs. Kaulback. He used to talk so frequently. He told me he would buy a yacht and run away with her.

Question.—What would you say to him?

Answer.—I'd talk to him and say he was getting childish, foolish, and then he would laugh to get over it again for a little while, till he got in love again. He said he loved her better than her husband did. That it was only the money that kept him, or he would run away with her. Several times he spoke of it. When she came to the house to live he got over that.

Question.—Did he ever tell you anything about kissing her?

Answer.—Yes; he told me he kissed her down in the house before it had burnt down, and 2290 Russie caught him, and he said, "Ah! mamma!"

Question.—During all this time that he was talking this way in what condition of mind was he?

Answer.—He could not have been in a very good one.

Question.—State what condition was he in.

Answer.—He couldn't do anything himself; he was quite childish, and he didn't know exactly what he was doing; couldn't count any money without some assistance.

Question.—Did he say anything about his money?

Answer.—I don't think it troubled him much.

Question.—You had some transaction with him about a stove and spoons. I want you to 2300 state it yourself without leading; begin at the beginning.

(Objected to as irrelevant.)

Answer.—When I left, two days before I left I said, Mr. Murdock, would you give me one of those small stoves, and he said most certainly, take any one you like of the bedroom stoves. I wanted it for the room I went to. I thought I would keep house. I told him what I wanted of it. I took it away in the open day, not dishonestly, on the top of my other things. I say distinctly that he gave it to me. The spoons—I had not been in the house 24 hours when Mr. Murdock said that when he died I should have them spoons. I took them according to what was told to me, but I didn't steal them. I was staying up at Mr. Morash's at the time. There was a note came to me to bring home the stove and the spoons. (Mr. Kaulback wrote the note—or the Kaulbacks—I burnt it.) It was not 2310 in Mr. Murdock's writing. I showed it to my daughter. I took them away after the Kaulback's came there to live in the day time, after dinner. I sent the stove up by a little boy, and carried the spoons myself. I seen Mrs. Kaulback and Mr. Murdock. She made a dreadful ado that Mr. Murdock was very poor and very childish and had not a spoon to eat out of. I said Mr. Murdock gave me those spoons and the stove. (This was in presence of Mr. Murdock.) She told me that I must be crazy, but I don't know whether it was she who was crazy or me. Mr. Murdock didn't aim to make any kind of answer. I said, Mr. Murdock, you gave me the spoons and the stove too. He didn't answer, and didn't dare to deny it. I rather think he was put up, so far as I could judge. I went away afterwards in the steamer, and I heard I would get a very bad name for stealing from Mr. Murdock.

2320

(Objected to by Mr. Owen, not being evidence or pertinent to the issue.)

[The words in brackets extracted and put down at Mr. Owen's request.]

Question.—Did the Kaulback's give you any information about what position they held in the house?

Answer.—No; they took full possession. They brought no servant while I was there. When I left, the old man was not in a fit condition to get along without a nurse. He told me before

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I left that he was getting kind of blind and deaf and very miserable, and I and Mr. Murdock parted the best of friends.

Question.—When he told you that he was entangled, did he explain how?

Answer.—Yes; he said he thought it was only for a few days they had come to live. I 2330 heard Mrs. Kaulback say to him, "You have plenty of cups and saucers;" but Mrs. Kaulback did not know then they were mine.

Question.—Did he ever tell you about making any provision for you?

Objected to as being irrelevant and not evidence.

Answer.—He told me that he had left me fifty pounds in a will, to provide for me after his death.

Question.—Had you ever attended him in severe illness, previous to April, 1875?

Objected to; not being evidence, and not pertinent to the issue.

Answer.—Yes. He never in any way gave me anything extra for that. He very often referred to having made provision for me when we'd be talking. 2340

Question.—Down to what period did he have these conversations?

Answer.—Down to almost when I left the house, in the evenings when we'd be sitting talking. I recollect Mr. Charles Beamish being at Murdock's in June. Sometimes Mr. Murdock would talk to me about Mr. Beamish; and wonder how he was getting on. He liked Mr. Beamish very much. He spoke kindly of him almost down to the time I left there.

Question.—Do you recollect any special instructions from the old gentleman?

Objected on same grounds as before.

Answer.—He told me if anything should ever happen to him that I should lock up the place, put the keys in my pocket, and send immediately to Mr. Beamish (send a despatch to him) and allow no one else in the house but some one that would be attending him after his death. Several 2350 times he told me this; and to send to Mr. Beamish, and that Mr. Beamish would see that I wouldn't be turned out of the house, and that I'd have a room to live in, and the money he left me would support me. I don't think it was a fortnight before Mr. Kaulback's family came in that he repeated those instructions.

Question.—Did he ever, on any occasion, tell you that in case anything happened, you should go to the Kaulbacks?

Answer.—No; he didn't ever tell me anything of the kind. Never spoke about them in no way at all, when he'd be talking about his business.

I couldn't tell exactly how many times I saw him drinking whiskey with Mrs. Kaulback,—about half a dozen times. 2360

Question.—Who else was he in the habit of drinking with?

Answer.—Sometimes in the evening and sometimes in the day time Mr. Kaulback would come in, and they'd smoke together and drink together; it might have been a half dozen times at one sitting. I can't say. It was generally in the afternoon when he did come.

Question.—Were there any other gentlemen in the habit of coming and drinking with him?

Objected to as irrelevant.

Answer.—Mr. Couples (a stranger); he comes often here (a piano tuner); about two or three times a year.

Question.—Who that reside in the place have you seen drinking whiskey with him?

Objected to by Mr. Owen as before.

Answer.—Parson Ellis several times; Mr. Owen the Rector. I don't recollect the others; there were several. 2370

Cross-examined by Mr. Owen:—

I went to Mr. Murdock's as his house-keeper, to take care of him; that was towards the fall. We made no agreement upon any wages at all.

Question.—How much did he pay you a month?

Answer.—I didn't get paid every month regularly. Whenever I wanted any money, I'd ask Mr. Murdock; and Mr. Murdock would ask if I wanted any. He would give me sometimes five, six or seven dollars at a time. Never gave it to me as a servant, but as a house-keeper. He never treated me as a servant. He'd tell me to do with it as I pleased. I don't know how much money 2380 I received from Mr. Murdock while I was there. I never put it down.

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Question.—Did you not sometimes ask him for money and he refused it?

Answer.—I never did. He never refused it. I was always satisfied with the amount of money he gave me. He always gave me what I wanted. (I can write and read sometimes; can't read a lawyer's writing.)

Question.—Mr. Owen places paper in Mrs. Peck's hands and asks witness to read it. Objected to.

Answer.—I haven't my glasses and won't fetch them; I won't read it.

Question.—I ask you again, can you write?

Answer.—Yes; I told you already I can write. I remember when Mr. Murdock was at 2390 Halifax in 1875.

Question.—On returning from Halifax, was he or was he not in the habit of going to the Kaulback's?

Answer.—Yes; he went as usual, when they came for him. Either Mr. or Mrs. Kaulback or one of the little children generally went for him. He sometimes went down when not sent for. Very seldom.

Question.—Do you know the Rev. Mr. Norwood?

Answer.—Yes; I saw him with Mr. Kaulback. I remember Mr. Norwood having been at Mr. Murdock's about the 1st of June, before Mr. Kaulback moved up there. Mr. Murdock was then at home. I remember Mr. Murdock's having gone to New Ross latter end of June. I got him 2400 ready to go.

Question.—What was the state of Mr. Murdock then, both mentally and physically?

Answer.—He was in a kind of a milder state.

Question.—What was the state of his mind?

Answer.—He told me that he was tired out and he had better stayed at home when he returned.

Question.—What was the state of his mind about the 1st of June, when Mr. Norwood visited him?

Answer.—Sometimes he was pretty good and sometimes he wasn't.

Question.—Was his mind then about the same as generally?

Answer.—Yes.

Question.—Was it or was it not about the same as at the time you left him?

Answer.—He was worse from then till I left.

Question.—Had not you and Murdock some business matters between you?

Answer.—I can't answer that.

Mr. Weatherbe objects that there's no time named and that the question cannot be answered.

Question.—Had you any business transactions with Mr. Murdock during the time you lived with him, if so, what?

Answer.—I want to know what. I don't know what. I never had no business transactions with him, more than paying his bills and getting receipts. I remember Mr. Murdock being laid up with a broken rib. I couldn't tell exactly what time. He came from Mr. Kaulback's from a party. 2420 It was sometime before I left, may be three or four months before. He came home from Mr. Kaulback's and was in liquor a little, more than he ought to have had. I put him to bed.

Question.—Did you on that occasion knock him against a stove?

Answer.—Knock him against a stove? I don't think you are right in asking me a question like that. When Mr. Murdock came home (No; I did not knock him against a stove!) I undressed him and put him to bed, and I was in bed some time and heard a great noise and a heavy fall. I came down and went right into his bed room. I found he wasn't in bed. I went into his parlour and he laid alongside the piano. I picked him up and put him to bed, and he laid there till morning. I don't know whether he came home with anyone, but he came in the house alone.

Question.—Was it or was it not before April, '75, when Mr. Murdock went to Halifax, that 2430 the rib was broken?

Answer.—It was about that time he went to Halifax that his ribs were broken. After the rib was broken and previously to going to Halifax, Mr. Murdock complained a great deal about it. He told me he suffered a great deal of pain. He was a man that didn't be in his bed much. It was about a month before he got to himself as he was. He was confined in his bed for several days after the rib was broken. I attended him and called Dr. Jacobs. He was Mr. Murdock's doctor as

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long as I lived with him. I sent for Dr. Jacobs on that occasion by Mr. Murdock's wish. Latter was high in a fever at that time. I don't remember that Mr. Murdock told Dr. Starr that his clothes were ghosts on that occasion. But he told me Dr. Jacobs was attending him at the time he thought his clothes were ghosts, at the time his ribs were broken. 2440

Question.—Then it was at the time his ribs were broken, Mrs. Peck, that he thought his clothes were ghosts, was it not?

Answer.—Yes.

Question.—Did you tell Mr. Beamish that Mr. Murdock had agreed to pay you three dollars a month.

Mr. Weatherbe objects to any conversation with Mr. Beamish. Besides, the matter is entirely irrelevant to the issue; it can't be used for any purpose in the petition, not even for contradiction; also time and place not given.

Judge considers question has no bearing.

Question.—You have a daughter named Bessie, have you not? 2450

Answer.—Yes.

Question.—She gave evidence in this matter, did she not, in your presence and hearing?

Answer.—Yes.

Question.—Did you, or did you not, tell her that Mr. Murdock had left you two hundred pounds by his will.

Answer.—I didn't say pounds nor hundreds. I said "two hundred." I didn't say pounds nor hundreds, and she didn't know the difference.

Question.—How do you know she didn't know the difference between dollars and pounds.

Answer.—I explained it to her when I went home.

Question.—Did you give her that explanation before she gave her evidence? 2460

Answer.—Oh, no; after she had given her evidence.

Question.—Had she then not learning enough to know the difference between dollars and pounds before you talked to her, after she gave her evidence.

Answer.—She had not.

Question.—Have you stated all you know, having any bearing on this case, or do you think of anything further in connection with this case, or matter in dispute having a bearing thereon.

Answer.—I can't say any more.

Question.—Have you stated all you know in connection with the matter in dispute, and having a bearing thereon as far as you know or recollect?

Answer.—I have, as far as I can remember or recollect. 2470

Question.—You stated that Mr. Murdock told you on different occasions that he had left you two hundred dollars by his will, and also that you would have a comfortable home in his house, and that Mr. Beamish would see that you would have a room in it to live in after his death. How often did he tell you that?

Answer.—Oh, very often.

I last saw Mr. Murdock before I went to Yarmouth. I went in gardening time, when beans and everything were there. They were eating beans at Yarmouth. I don't know what time I left Mr. Murdock. Three or four days after, the Kaulback's went to Mr. Murdock's. I left, to the best of my knowledge. I was upset. I didn't know what I was doing.

Question.—How long after Mr. and Mrs. Kaulback moved in the house, did you go to Yarmouth? 2480

Answer.—I think it was about three weeks to my recollection.

Question.—You never saw Mr. Murdock after that, did you?

Answer.—Yes.

Question.—Had you ever any conversation with Mr. Murdock after that. If so, when and what about? (I mean after you went to Yarmouth.)

Answer.—No.

Question.—What room did the stove you got at Mr. Murdock's belong to?

Answer.—I can't tell exactly what room it came out of. The stoves were all down. Mrs. Kaulback had the bed-room stove up. 2490

Question.—You remember in your direct examination that you took some spoons from Mr. Murdock, did you not?

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Answer.—I did. I took the spoons because he gave them to me. It was when I first moved in the house that the arrangement with Mr. Murdock, (referred to by me) about the spoons, was made.

Question.—What did he then tell you with regard to them?

Answer.—He gave them to me out of kindness, to take them whenever I wanted them, and said they were mine at his death, or something like that. But I took them when he gave them to me.

The spoons were used in Mr. Murdock's house from that time to the day I left, Mr. Murdock 2500 used them. There was no other spoons in the house except my own that I used when I kept house. My own spoons, I used, and those I got from Mr. Murdock when I kept house for him. My own spoons and his were there.

Question.—Then you took what you call your own and his at the time you left Mr. Murdock's.

Answer.—I did.

Question.—Where were the spoons when Mr. Murdock told you (in his own house at the time you first went to keep house for him) that you should have after his death, or something like that?

Answer.—In his chest.

I left a stove in Mr. Kaulback's bed-room, and one in the garret in my bed-room, when I 2510 left. There were no other bed-room stoves in the house.

Question.—Then the stove you took belonged to the parlor?

Answer.—I don't know where it belonged. I suppose to the parlor. The stoves were down.

Question.—Were there any stoves down at the time, except the one taken by you, which belonged to the parlour?

Answer.—I would have taken the one out of my room only it was too heavy. There was no stove down except the one that I took, and I could have taken my own but it was too much trouble.

Question.—What you called your own belonged to Mr. Murdock, did it not?

Answer.—Yes; he gave it to me. The three stoves were alike.

Question.—Were the three stoves all alike in size?

Answer.—No; not exactly all alike in size; but they were one make.

Question.—Did you take the pipe as well as the stove?

Answer.—Yes, I did. Mr. Murdock told me. Do you want to know the price. I bought the stoves. Mr. Murdock paid for them, gave me the money and I fetched home the receipt.

Question.—How long before you left Mr. Murdock's did he last tell you about his having left you \$200 in his will. You have already referred to his having done so on different occasions.

Answer.—Not very long before I left, or before the Senator's house was burnt down.

Question.—Had you or had you not, at the different times of his making those statements to you, reason to believe that he meant what he said?

Mr. Weatherbe objects.

Question.—Did you or did you not believe Mr. Murdock's statements to you with respect to his having left you \$200 in his will at the different times, when made by him.

Answer.—I believed it.

Question.—Now, did he know and was he responsible for the statements made to you on the different occasions referred to.

Answer.—Of course he knew what he said to me.

Question.—How was Mr. Murdock's sight.

Answer.—It was very good at that time, lately, before I left Mr. Murdock's house his sight failed. He told me so.

Question.—Did you ever tell Mr. Murdock that Mr. Kaulback destroyed this letter to which you referred.

Answer.—No, I did not.

Question.—Did you ever tell him that Mr. Kaulback opened it and read it?

Answer.—No, sir. I never said anything about it.

Question.—Did Mr. Murdock, in his house and about the time you were leaving, in the presence of Senator Kaulback and his son Charles, ask you what you had done with that letter, or if you had mailed it, or words to that effect.

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Answer.—I never heard anything about it. All that I know about the letter Mr. Kaulback forbid me ever to mention it. 2550

Mr. Owen repeats the question.

Answer.—I never heard a word of it.

Mr. Owen repeats the question again, and asks the witness to answer yes or no.

Answer.—I heard nothing about it.

Question.—Did Mr. Murdock ever, at the time and place referred to, ask you any questions with respect to that letter.

Answer.—No. He asked me nothing about it and I know nothing about it.

Mr. Murdock didn't hand me the letter, but laid it on the table and asked me to take it to the mail. It made no difference whether I took or sent it. The letter I received from Mr. Murdock demanding return of the stove and spoons was not in his handwriting; to the best of my knowledge Charlie Kaulback delivered it to me. 2560

Question.—Did you ever take any whiskey while living at Mr. Murdock's.

Mr. Weatherbe objects to the evidence as irrelevant to the issue, (Judge admits question.)

Answer.—I did not take any whiskey at Mr. Murdock's except when sick, and then I went and asked him.

Question.—Were you sick very often?

Mr. Weatherbe objects as irrelevant.

Answer.—None of your business how often I was sick. I was not frequently in the habit of drinking liquor when at Mr. Murdock's.

Question.—While living at Mr. Murdock's, were you not sometimes in the habit of taking intoxicating liquor in such quantities as to affect your mind and cause you to stagger? 2570

Mr. Weatherbe objects. (Judge admits question.)

Answer.—It's a lie, sir.

My bedroom was upstairs and Mr. Murdock's down. Mr. Murdock never troubled me, he was too much of a gentleman. He never came upstairs.

Question.—Did he ever send any bottles upstairs?

Answer.—No, I don't see why he should bring bottles upstairs.

Question.—You have stated that you remained in Mr. Murdock's house some three or four days after Mr. Kaulback's family moved there. Was your mind affected so as to prevent you doing your work, or were you drunk during that time? 2580

Answer.—You must be crazy to ask me that question. I won't answer that question, for I was not drunk. How could I have been when I cooked the dinner for Mr. and Mrs. Kaulback.

Question.—Were you not so intoxicated during the time last referred to, that is between the time of Mr. Kaulback's family coming to Mr. Murdock's house, and leaving, that you were unable to cook the dinner?

Mr. Weatherbe objects, being irrelevant.

Judge admits the question.

Answer.—I say it's a lie. I'll tell you; I was upset in mind and body by trouble. I didn't know where to go.

Question.—Were you in the habit of giving liquor away? 2590

Answer.—No, I gave no liquor away except what I took into the parlor.

Mr. Weatherbe objects, being irrelevant.

Question withdrawn.

Re-examined by Mr. Weatherbe:—

Mr. Owen objects to re-examination.

It was very late when Mr. Murdock came home the night he broke his rib. I waited up for him as I always did. I don't think he was near the stove by the way he laid. I rather think he went himself to the party.

Question.—Did any person come to the door with him or speak to you?

Answer.—No, he came in himself. It was a cold, windy night, I think. 2600

Question.—What time of year was it?

Objected to as being irrelevant and not pertinent to the issue.

Answer.—Can't tell.

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Question.—Can you tell whether it was May or June?

Answer.—I can't tell.

Question.—May it not have been in May or June?

Answer.—It may have been between, for all I know.

Question.—Did any of the Kaulbacks call next day to see him?

Answer.—No, they did not.

I don't think he was near the stove that night. When I saw Mr. Norwood at Mr. Murdock's 2610 in June, Mr. Kaulback was there. They were talking—and drinking rye whiskey. I think it was in the morning.

Question.—About how many glasses had they?

Answer.—I couldn't tell. I wasn't in the room.

Questions.—About how long were they there?

Answer.—I should think a little over half an hour. I expect this was some of the same whiskey the senator brought in the jug. I never saw the Rev. Mr. Norwood there on any other occasion. Couldn't say what subject they conversed on. I never heard religion mentioned at that time. Mr. Murdock went to New Ross with Mr. and Mrs. Kaulback to a wedding, I think. (That was the visit I referred to in my cross-examination.) 2620

Question.—On your cross-examination you said that Mr. Murdock on his return from that visit was not well, was he ever so well after that visit as before?

Mr. Owen objects not being subject for re-examination, but if evidence, a part of Mr. Weatherbe's original case.

Judge decides question shall not be put.

The conversation I had with Mr. Murdock after he returned from New Ross was in his room. He told me he was very tired.

Question.—And what else?

Answer.—That he had rather stayed at home, and that he had much better stayed at home.

Question.—Did you say that you noted a change in him bodily and mentally after this. 2630

Mr. Owen objects on ground of its not being a matter for re-examination, and a part of petitioners original case. (Judge admits question.)

Answer.—Yes, Mr. Murdock told me the Kaulbacks invited him to this party or wedding, after Mr. Norwood was there at the house. I think he was away two or three days, but can't say for certain. I can't say whether this was before or after his ribs were broken. Mr. Beamish was there after that, as far as I remember.

Question.—Did you hear Mr. Norwood talking about the wedding while he was at the house?

(Objected to.)

Answer.—No. I did not hear him.

Question.—Did Mr. Kaulback and Mr. Norwood go away together from Mr. Murdock's on 2640 that visit.

Answer.—Yes.

Question.—You say that Mr. Kaulback and Mr. Norwood went away from the house together. Did Mr. Murdock go with them?

(Objected to.)

Answer.—No, they left him in the house.

Question.—After they went away what state was he in?

(Objected on ground that its not matter for re-examination, and part of petitioners original case, if at all pertinent.)

Judge rules question out, conceiving it a part of petitioners original case. 2650

Neither Mr. Kaulback or Mr. Norwood returned that day. They left before dinner.

Question.—How many glasses were in the room on the table?

Answer.—Four tumblers and a decanter of whiskey. No other liquor. That was in Mr. Murdock's bed-room.

Question.—Did you show him out the door?

Answer.—No, they didn't ask me.

Question.—Where did you find Mr. Murdock when you went in the room?

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Answer :—Sitting in a chair.

Question.—Mr. Owen asked if you were drunk, and you stated that you were very much disturbed and upset, what had happened to disturb you after the Kaulback's came there to live. 2660

Mr. Owen object, on ground that the words disturbed and upset were proffered by the witness, and not in answer to the question were you drunk, as the above question will show.

Answer :—Why I was to go out, and didn't know where to go.

Question.—Had they any other servant in the house to do the work but you.

Objected to, not being evidence, or subject for re-examination.

Judge decides question shall be put.

Answer.—No, they had no other servant; myself and daughter did the whole of the work. Made Mr. Kaulback's bed, and did everything that was to be done, and cooked their meals.

(Sgd.)

CATHERINE PECK.

Sworn to at Lunenburg, in the County of Lunenburg, this 8th day of August, A. D. 1876, before me. 2670

GEORGE T. SOLOMON,
Judge of Probate

COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof in solemn form of the alleged last will and testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister, deceased, dated 15th November, A.D. 1875.

The examination of Thomas Myrer, of Lunenburg, in the County of Lunenburg, butcher, taken before me, George T. Solomon, Judge of the Court of Wills and Probate, and for granting letters of administration within the County aforesaid, the eighth day of August, A. D. 1875, who, being duly sworn, deposeth and saith. 2680

I recollect when Senator Kaulback and his family lived in Murdock's house in the Fall of 1875. I went to the old man's house when Senator Kaulback was there with an order from Mrs. Metzler. I took it to Mr. Murdock in the house. Mrs. Kaulback and Mr. Murdock were there. I handed Mr. Murdock the order and Mr. Kaulback came in from the back somewhere.

I said there was an order from Mrs. Metzler, it was somewhere about \$60 or \$70. Mr. Murdock said he didn't know about the order. I asked the old man to pay it. Mr. Murdock looked at the Senator and said whatever the Senator says I'll do. The Senator said haven't you handed it all over to me. What have you got to pay, you are an old, childish man, and if Mrs. Metzler wants anything let her come to me. That's all that was said and I walked off. The old man said nothing more to my hearing, and I walked off. This was in the old man's cottage on the hill where he had lived previous to Mr. Kaulback's coming into the house. This was in the house he died in. The room I was in I think they had for a dinner place. It was going in the front way on the left hand. I could not tell what month it was in, about this time a year and shortly after Mr. Kaulback moved in. The old man took the order in his hand and looked at it. 2690

Q. What did he do with it. I could not tell.

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Cross-examined by Mr. Owen.

I met Mr. Kaulback on the street before going to Mr. Murdock that day. I told him my errand. Mr. Kaulback said something like this : " Mr. Murdock has handed everything over to me and if Mrs. Metzler wants anything she's got to come to me. 2700

Q. Was not Mr. Kaulback a lawyer practising in Lunenburg at that time ? A. Yes.

Q. Did not Mr. Kaulback give you to understand at that time that he was Mr. Murdock's attorney on this matter ? A. Was to my knowledge.

Q. Did not Mrs. Metzler present that bill previously for payment. A. She gave me the order to draw the money.

Q. Did you not know that the amount had been disputed previously. A. I did not.

Mr. Murdock was in the habit of getting meat from me. He paid me his beef bill. I gave him a receipt. (That produced is the paper.) It was written by Mr. Murdock in my presence, and that is my signature to it. (Receipt marked " G. T. S." No. 10.)

Q. Are you related to Mrs. Peck ? 2710

Mr. Weatherbe objects being irrelevant.

Judge rules question out.

Q. Are you related to Mrs. Peck who has given evidence on behalf of petitioner in this matter, and who is a legatee under a will made by Mr. Murdock, April 6th, 1875 ?

Mr. Weatherbe objects as being the same question.

Judge rules question out.

Re-examined by Mr. Weatherbe.

This money for the meat I received before I presented Mrs. Metzler's bill.

He paid me the meat bill at the house. Mr. Kaulback was not present but was living there at the time. 2720

[Signed] THOMAS MYRER.

Sworn to at Lunenburg, in the County of Lunenburg, this 8th day of August, 1876, before me.

[Signed] GEORGE T. SOLOMON,
Judge of Probate.

COURT OF PROBATE AND WILLS.

LUNENBURG, SS.

*In the matter of the proof in solemn form of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister, deceased.
dated 15th November, A. D., 1875.* 2730

The examination of Joseph Creighton, of Lunenburg, in the County of Lunenburg, master mariner, taken before me, George T. Solomon, Judge of the Court of Wills and Probate, and for granting Letters of Administration within the County aforesaid, the 8th day of August, A. D., 1876, who, being duly sworn, deposeth and saith :

I know the late Beamish Murdock. I recollect being in the Supreme Court last October when Mr. Murdock was sued by Mrs. Metzler for the claim mentioned by the last witness, Mr. Myrer, on

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the trial of the cause. I know Senator Kaulback very well. He and Mr. Johnson acted for Mr. Murdock on that occasion. I recollect Senator Kaulback giving evidence in the cause.

Q. Do you recollect his making a statement on oath then as to the quantity of whisky he had previously been supplying to his client, the late Mr. Murdock, deceased? 2740

Objected to by Mr. Owen on the ground that the evidence was then committed to writing, and that it is incumbent on Mr. Weatherbe to produce the written evidence before asking the witness with respect to an alleged disconnected statement, and also as being irrelevant, and not evidence.

Judge admits the question.

A. Mr. Kaulback said that he had been supplying Mr. Murdock with a couple of gallons of liquor every week besides having a cask of whisky in common between them. Why, I remember it so well I went to the Clerk of License that day to have Mr. Kaulback brought up for selling liquor without license.

Cross-examined by Mr. Owen,—

Q. You had a law suit with Mr. Kaulback in the Supreme Court some time ago, had you not? 2750

Objected to as irrelevant. Judge decides question shall not be put.

Sworn to at Lunenburg, in the County of Lunenburg, }
this eighth day of August, 1876, before me, }
GEO. T. SOLOMON, Judge of Probate.

JOSEPH CREIGHTON.

COURT OF WILLS AND PROBATE.

CO. LUNENBURG, SS.

In the matter of the proof in solemn form of law of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister-at-Law, deceased. 2760

The examination of Thomas Curll, of Lunenburg, in the County aforesaid, trader, taken before me, George T. Solomon, Esquire, Judge of Probate of said County, this ninth day of August, A. D., 1876, who, being duly sworn, deposeth and saith:

I was present in the Supreme Court when Mr. Kaulback gave evidence in the suit between Mr. Murdock and Mrs. Metzler.

Mr. Owen objects as not being evidence or pertinent to the issue.

Q. Did you hear Mr. Kaulback give evidence of the quantity of liquor supplied to Mr. Murdock. A. Yes, I heard Mr. Kaulback say on his evidence that he supplied Mr. Murdock with a couple of gallons of whisky weekly. Also, that they had a cask in common between them.

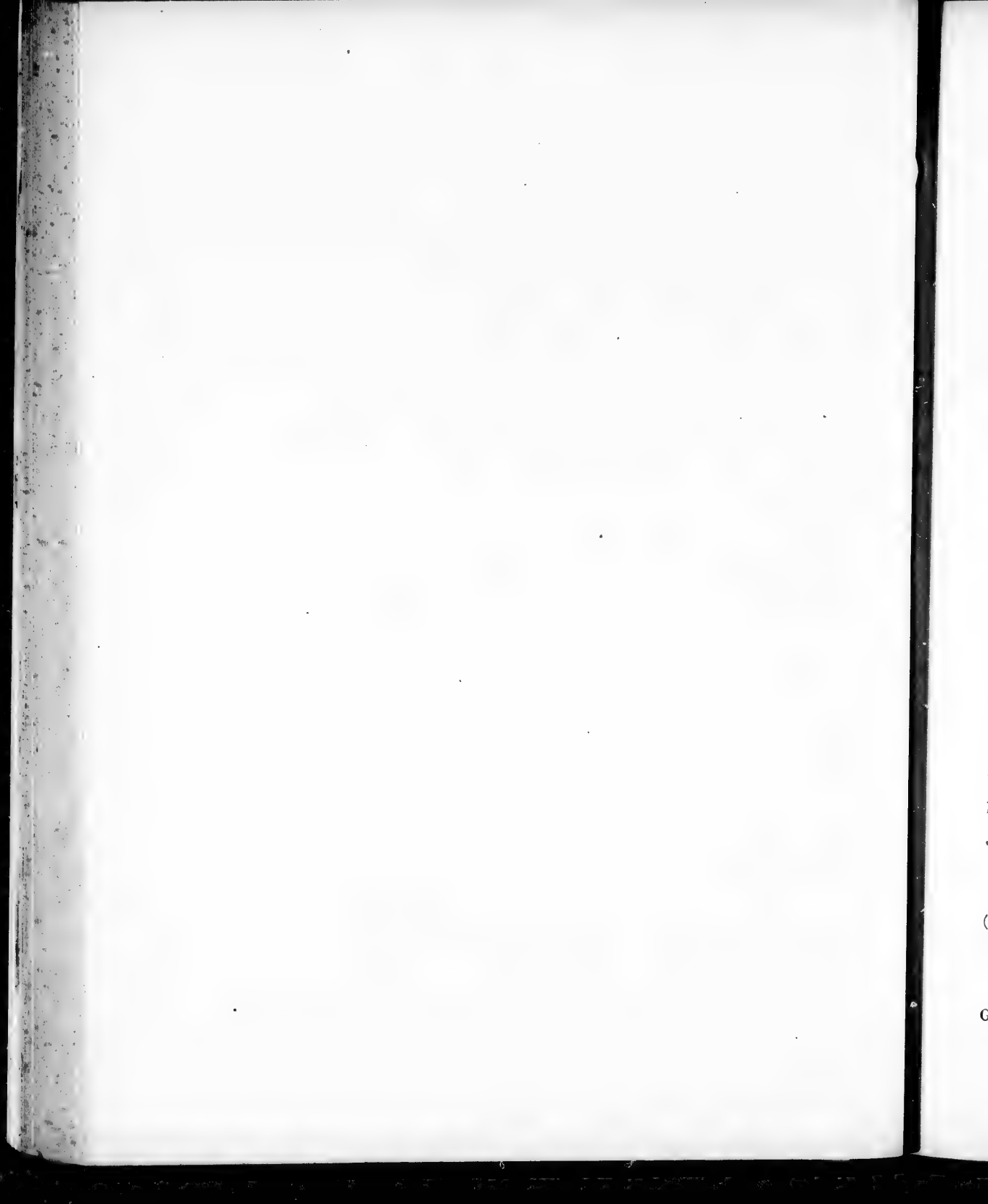
Cross-examined by Mr. Owen,—

I made no minute of the evidence at the time.

Sworn to before me at Lunenburg, in the Co. of Lunenburg, this ninth day of August, A. D., 1876, }
GEORGE T. SOLOMON, Judge of Probate.

THOMAS CURLL,

2770



COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof in solemn form of law of the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister-at-Law, deceased.

The examination of Francis Morash, of Lunenburg, in the County aforesaid, taken before me, George T. Solomon, Esquire, Judge of Probate of said County, this ninth day of August, A. D., 1876, who being duly sworn, deposeth and saith:

I knew the late Beamish Murdock. I had occasion to go to him about some taxes. The first time I went there, I saw Mrs. Peck. She took me in to him. The taxes were due from the time he lived in the first house. When I first went to him I had a warrant, and asked him for the taxes, I meant, if he didn't pay, to levy on his things. Had orders to levy on his goods. This was before the Kaulback family went into the house. I had two warrants against him at several times for taxes. He told me he wouldn't pay it. I told him I'd give him nine days to pay it.

Then I took another Constable with me after nine days. He had conversation with me the first time about Mr. Kaulback. He said he would send for Mr. Owen. I asked him to send for Mr. Kaulkanek, to see if he was able to pay the rates or not. He said he'd send for Mr. Daniel Owen, and what ever he'd say would be all right. He said that Mr. Kaulback sometimes made right wrong and wrong right. I couldn't tell whether he gave that as a reason for not sending for Mr. Kaulback. Must have been. He sent for Mr. Daniel Owen. It was the old gentleman. I think he practised Law in Lunenburg. This all happened on the first occasion. Mr. Owen came. Mr. Murdock paid me the money, after he saw Mr. Owen. I came to the house on another occasion. This may have been a couple of months before the Kaulbacks came, early in the summer. The second time I visited the house the Kaulbacks were there. Mrs. Peck was not there. I knocked at the door and Mrs. Kaulback came.

(Mr. Weatherbe tenders the evidence of a conversation with Mrs. Kaulback, to show that the deceased Mr. Murdock, was at that time guarded.) 2800

Mr. Owen objects on the ground of it not being evidence, relevant or pertinent to the issue.

Mr. Weatherbe withdraws the question for the present.

Cross-Examined by Mr. Owen,—

One warrant was for School and County and Poor rates, the other for Sectional rates. Mr. Owen was Clerk of the Peace.

Q. Mr. Morash, Mr. Owen as Clerk of the Peace, kept the Rate Rolls of the County, did he not?

Mr. Weatherbe objects on the ground that this is irrelevant and not the mode of proof, and Judge decides it is not evidence.

Q. Mr. Owen lived much nearer Mr. Murdock than Mr. Kaulback, did he not? 2810

Mr. Weatherbe objects, being irrelevant. Judge rules question out.

Q. State what Mr. Murdock said and what took place after Mr. Owen arrived.

A. Mr. Murdock asked if he was liable to pay them rates, and afterwards paid the money. (And when he had done that, he sent Mrs. Peck for a bottle of brandy.)

Mr. Owen objected to latter part of answer, being proffered by witness.

[Signed] FRANCIS MORASH.

Sworn to, at Lunenburg, in the County of Lunenburg, the 9th day of August,

A. D., 1876. Before me,

GEORGE T. SOLOMON, Judge of Probate.

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COURT OF WILLS AND PROBATE.

2820

LUNENBURG, SS.

In the matter of the proof in solemn form of the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, deceased, Barrister-at-Law.

The examination of George A. Ross, of Lunenburg, in the County aforesaid, Barrister-at-Law, taken before me, George T. Solomon, Esquire, Judge of Probate of said County, on the ninth day of August, A. D., 1876, who, being duly sworn, deposeth and saith :

I recollect being in the Supreme Court when Mr. Kaulback gave evidence in the cause between Mrs. Metzler and Mr. Murdock, deceased, with regard to liquor supplied to deceased. He said that he had been in the habit of supplying Mr. Murdock with about a couple of gallons (of whisky I think) on an average per week. It was some kind of liquor, and he also said that he got a cask, of which Mr. Murdock was to get the half.

Cross-examined by Mr. Owen,—

I am an Attorney-at-Law.

Q. You have been taking part in this controversy as an Attorney on behalf of petitioners, have you not ?

Mr. Weatherbe objects that this question is not relevant to the issue.

A. I have been employed by Mr. Beamish for general purposes in connection with this matter. I have not been assisting in procuring evidence in his behalf. Have only been employed within the last twenty-four hours.

Q. You have referred to a suit brought by Mrs. Metzler against Mr. Murdock, tried in the Supreme Court, and in which Mr. Murdock gave evidence, was Mr. Murdock personally present during the trial of said cause ? A. Yes, he was present.

Q. Were you the Attorney who brought that action for Mrs. Metzler against the late Beamish Murdock. A. Yes.

Q. Did Mr. Murdock, on that occasion, give his evidence. A. He did.

Q. When was that suit tried ? A. In October last.

Q. About how long did the evidence of Mr. Murdock personally occupy on that occasion ?

A. That is a question I am not prepared to answer. I cross-examined him.

Q. How long were you cross-examining him ?

Mr. Weatherbe objects as irrelevant to go into the proceedings of that trial.

2850

Judge rules out the question as irrelevant.

Q. About how long did the evidence of Mr. Murdock occupy on that occasion ? A. I hardly know. I don't think his direct and cross-examination occupied more than 25 or 30 minutes. It may have been longer. He was sworn.

Q. Did not Mr. Murdock, on that occasion, give his evidence in a clear, lucid, and distinct manner ?

Mr. Weatherbe objects.

Judge admits the question.

A. He gave his evidence in a fairly clear way.

Q. Did he not, on that occasion, in giving his evidence, display a clear mind and retentive memory ? A. Not on all points.

Q. State on what point or points his mind and memory was not clear, if any ? A. Why, there was a sum of thirty dollars, I think, he had paid Mrs. Metzler and he admitted owing Mrs. Metzler a certain balance, but he seemed to have no recollection what the balance was.

Q. Did he not deny that there was any balance due her ? (Objected to.) Objection with-

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drawn. A. In his direct examination he most positively denied that he owed Mrs. Metzler anything, and in his cross-examination he admitted that he owed her a little something, but nothing like the balance claimed. He didn't know what it was; some bottles, he said, I think. He may have said 1 or 2 bottles; but I don't think so.

I have been acquainted with Mr. Murdock to within 2 or 3 months after he came. I saw him 2870 frequently passing through Mr. Kaulback's office, but not frequently to speak to.

I purchased his library from him about 2 years ago—a month or two previous to his moving away from Lunenburg. The last time I recollect seeing Mr. Murdock was in the court-room in October last. I may have seen him since, but don't recollect. I don't think I saw him on any other occasion in October. I may have. I called at his house in October to see him, but didn't see him.

Q. Did you see him in September? A. Yes, I guess I did, I saw him either in August or September.

Q. Was Mr. Murdock, up to the time you last saw, of sound disposing mind and memory, in your opinion, and capable of making a Will.

Mr. Weatherbe objects on the grounds that witness cannot give opinion. (Cited Greenleaf, 2880 vol. 1, page 564.)

Judge rules question out.

Re-examined by Mr. Weatherbe:

Mr. Owen objects to any re-examination.

Q. How long previous to the trial had the matter of the bottles taken place, about which he (Mr. Murdock) was giving evidence?

Mr. Owen objects, Mr. Weatherbe having referred to the trial, and Mr. Owen not having gone into new matter on the cross-examination of witness; also not evidence or pertinent to the issue. (Judge admits the question.) A. All I know about it is from the bills upon which the action was brought, and they ranged from the month of March to the month of August previous to the October 2890 of the trial.

Q. On the occasion that you mention having seen him previous to October, were there any indications that he had been drinking? (Mr. Owen objects, not being a subject for re-examination or evidence. Judge rules the question out.)

Q. On the occasion when you saw Mr. Murdock in September, referred to by Mr. Owen in his cross-examination, where was he? Objected to by Mr. Owen. A. I don't know if it was on the same day or not; but once in Mr. Kaulback's office, and once in Mr. Murdock's house.

Q. Who else were present on that occasion? A. I think there was present neither one nor the other referred to on the cross-examination. I don't know which occasion you meant.

Q. Who were present when you saw Mr. Murdock at his house, referred to in your answer 2900 concerning the interview with Mr. Murdock, referred to in the cross-examination of Mr. Owen?

Mr. Owen objects on ground that is not evidence or subject for re-examination, and also on the ground of there not having been an interview referred to by witness on cross-examination. (Judge rules question out.)

Q. What time of day did you see him in September?

(Mr. Owen objects, not being evidence or subject for re-examination, Judge rules question out.)

Q. Did you not go to Mr. Murdock's house at Kaulback's request, on the occasion referred to in September?

Mr. Owen objects, not being new matter, also on the ground of not having asked witness as 2910 to when he saw Mr. Murdock, or at whose request he went to see him.

Judge decides question shall not be put.

Q. What part of the house did you see Mr. Murdock in when you say you saw him in the house in September?

Mr. Owen objects, not being new matter or subject for re-examination, and also in consequence of his not having asked the witness on cross-examination as to when, or in whose house, or in what part of the house he saw Mr. Murdock.

Judge decides question shall not be put.

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Q. Did you not go on that occasion to Mr. Murdock's house to witness another and a different Will for the old man and did you not find that he had been drinking? 2920

Mr. Owen objects, not being evidence or subject for re-examination or pertinent to the issue.

Judge decides question shall not be put. I am sure I saw Mr. Murdock pass through Mr. Kaulback's office frequently. I saw him in Mr. K.'s office frequently. (Objected to.)

Q. Did you ever see him signing papers in the office? (Objected to.)

Q. What did you see him doing there. (Objected to, not being evidence or matter for re-examination) or pertinent to the issue.

Judge rules question out

Q. Did you see Mr. Kaulback endeavoring to get Mr. Murdock to sign a paper in his office? (Objected to on same ground as above.)

Judge rules question out. 2930

Q. You stated in your cross-examination to Mr. Owen that you called at Mr. Murdock's house in October to see him, and didn't see him. What prevented you?

Judge rules question out.

GEO. A. ROSS.

Sworn to at Lunenburg, in the County of Lunenburg, the ninth day of August, A.D. 1876, before me.

GEO. T. SOLOMON,

Judge of Probate.

COURT OF WILLS AND PROBATE.

CO. OF LUNENBURG SS.

2940

In the matter of the proof, in solemn form of law, of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister, deceased.

The examination of Joseph W. Norwood, of New Ross, in the County of Lunenburg, Minister of the Gospel, taken before me, George T. Solomon, Esquire, Judge of Probate of said County, this ninth day of August, A.D. 1876, who, being duly sworn, deposeth and saith:

I reside at New Ross, and have resided there 4 years next November, in the capacity of priest of the Church of England. I was acquainted with the late Beamish Murdock. I got acquainted with him when *en route* for my present parish. That would be four years ago in October next. I have been at Lunenburg from time to time during the time of my having charge of the Parish of New Ross. I have met Mr. Murdoch on the occasions of those visits to Lunenburg. I first met him when *en route* for my parish. I used to meet him at Senator Kaulback's and King's Hotel. I first met him at the Honble. Mr. Kaulback's house. 2950

Q. Where did you frequently meet him afterwards in Lunenburg? (Mr. Weatherbe objects as leading.) A. At the residence of the Honble. Mr. Kaulback, at King's Hotel, and at Mr. Kaulback's own cottage in Lunenburg. The last mentioned cottage is that in which Mr. Kaulback now lives. I always had conversation with Mr. Murdock on those occasions; argumentative.

Q. How did you find him mentally? (Mr. Weatherbe objects: 1st—Witness cannot give any evidence on the subject; and, 2nd—Period is too remote.) Question withdrawn.

Q. On what subjects did you enter into conversation with Mr. Murdock during your interview with him at Mr. Kaulback's house—I mean at the house of Mr. Kaulback which was destroyed by fire? (Mr. Weatherbe objects, on the ground that the proof relating to sanity or insanity must relate to the time of the act in question, or immediately before or after the time of the 2960

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act in question; that this period covers nearly the period of four years.) Judge admits the question. A. On historical, philosophical, metaphysical, theological, origin and relative relation of languages, are the principal subjects we argued on.

Q. Give as much further information as you desire with respect to those conversations. (Objected to.) A. I found him intellectually very powerful. (Mr. Weatherbe objects to any opinion except immediately before or after the execution of the will, as to sanity.)

Q. On what terms were Mr. Murdock and Mr. Kaulback during the time referred to, when you were in the habit of meeting him in the house of Mr. Kaulback, which was burned about a year ago? (Mr. Weatherbe objects on the ground that it calls for the opinion of the witness, and not for facts. 2970)

Q. State any facts that occur to you, shewing the relative position of Mr. Kaulback and Mr. Murdock with regard to one another, during the different occasions you met Mr. Murdock at the house of Mr. Kaulback that was burned about a year ago, or elsewhere, up to the date of said conflagration? (Objected to as being leading.) A. Acts of kindly greeting on the part of Honble Mr. Kaulback, during the different visitations Mr. Murdock made at Mr. Kaulback's house. Acts of hospitality and respect on the part of Honble Mr. Kaulback to his guest Mr. Murdock; such as one gentleman would extend to another.

K. During the time referred to, did you hear Mr. Murdock make use of any expression toward Mr. Kaulback and his family; if so, what? (Objected to as irrelevant.) A. Terms of friendship to Mr. Kaulback; of Mrs. Kaulback, in terms of respect; of the children, in terms of affection. 2980

Q. During all the time referred to (that is, all the time you have been acquainted with him) did you ever know Mr. Murdock to be, or see him, under the influence of, or affected by intoxicating liquor?

Objected to as irrelevant and remote.

A. I never knew him, or saw him under the influence of liquor, or affected by liquor.

Q. Were you in Lunenburg in June, 1875. A. I was. Squire George Ross, of New Ross, accompanied me. It was in the early portion of the month. I think I remained 3 or 4 days in Lunenburg on that occasion. Mr. Murdock was then living in the cottage where he died, now occupied by Mr. Kaulback. I made a call upon Mr. Murdock at the cottage on the morning of one of those days, and saw him. Hon. Mr. Kaulback accompanied me. 2990

Q. How came you to go there? A. I desired to call on him because I esteemed him as a friend. (Objected to as irrelevant.)

Q. Did you go there at Mr. Kaulback's instigation? (Objected.) A. I did not. I found Mr. Murdock at home in his study, apparently engaged in study. He was reading. It was not his bed room. There was nothing there but study furniture and books. I entered into conversation with him relative to a book he had published—"A History of Nova Scotia"—and requested a copy. I further asked permission to be allowed to examine his books. He gave it, and pointed out the different sections, so that I might be enabled the more readily to examine them. By sections I mean historical works in one place and law works in another. I examined his books and remained there a few moments only. The conversation was on the books, but can't remember the exact words. Mrs. Peck came in while I was examining the books. Mr. Murdock spoke to her as in address from master to a servant. I took no notice of the conversation between Mr. Kaulback and Mr. Murdock, as I was engaged with examining the books. I then left the house, accompanied by Mr. Kaulback and Mr. Murdock. (All this objected to as irrelevant. 3000)

Q. Had you, or Mr. Murdock, or Mr. Kaulback, on that occasion, any whisky or anything to drink? A. We had nothing whatever to drink.

Q. If Mrs. Peck, the servant referred to by you, stated in her examination that you and Mr. Kaulback drank whisky, or anything else, at Mr. Murdock's house on that occasion referred to, was it true or false? (Objected to.) 3010

Judge rules question out, as already answered.

The Judge, on application of Mr. Weatherbe, has ordered that the witnesses be out of Court while the examinations are going on.

Mr. Weatherbe moves that the names of the witnesses be stated by Respondent's Counsel, or that an order be made, that if any witnesses remain, they will not be examined.

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Mr. Owen objects to the motion owing to Petitioners witnesses not having been excluded, and that the order at this stage of the proceedings would consequently operate unfairly to the Respondents.

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The Judge grants the full order.

Q. Was there a decanter with whisky, or any tumblers brought into Mr. Murdock's room in which you were and placed on the table, or elsewhere, by Mrs. Peek, or any one else, while you were in Mr. Murdock's house, at the visit referred to by you, in June, 1875? A. I saw nothing of the kind brought in by Mrs. Peek or anybody else.

Q. If Mrs. Peek had brought, or any one else had taken a decanter of whisky or liquor into Mr. Murdock's room during the time on the occasion referred to in June, would you not have seen it, and know the fact? A. I would.

Q. Was there a decanter of whisky, or other liquor and tumblers on the table in Mr. Murdock's room when you entered therein on the occasion referred to in June, or during any portion of the time that you were then there? A. I saw nothing of the kind during the time I was then visiting Mr. Murdock.

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Q. If there had been a decanter of whisky, or any other liquor or tumblers on the table, in said room, on the occasion referred to, would you not have seen them?

Mr. Weatherbe objects on the ground that it is reasoning with the witness, and leading him.

Judge admits question.

A. I feel certain that I would have seen them. On leaving Mr. Murdock's house in June, Mr. Kaulback accompanied me.

Q. Did not Mr. Murdock also accompany you?

Mr. Weatherbe objects. (Mr. Owen does not press the question)

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Q. You stated in your last answer that on leaving Mr. Murdock's house, in June, Mr. Kaulback accompanied you, but that you had not finished your answer, what else did you intend adding, and what further statement do you wish to make with regard to it?

(Mr. Weatherbe objects that the question is leading, that Mr. Owen's question withdrawn above, immediately followed the evidence immediately preceding it, and was intended to suggest the name of Mr. Murdock to be added. That the witness did not suggest that he had not finished the answer until he heard Mr. Owen's next question, and that it is not true that he had not finished his answer. Judge admits question.)

A. But in leaving for Mr. Kaulback's house, Mr. Murdock accompanied us, (understanding that the question put to me was "on leaving for Mr. Murdock's house.")

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Q. In order that you may fully understand the nature of the question, I ask you who accompanied you when you left Mr. Murdock's house, on the occasion referred to in June? (Mr. Weatherbe objects, as still further leading and suggesting to the witness the very answer required from him. Judge admits question.) A. Mr. Kaulback and Mr. Murdock.

Q. Where did you go? A. We went indirectly to Mr. Kaulback's house. By "we" I mean Mr. Kaulback, Mr. Murdock, and myself.

Q. What do you mean by saying that you went indirectly to Mr. Kaulback's house? A. We went beyond Mr. Murdock's house and round back to Mr. Kaulback's house. We were looking at some land of Mr. Kaulback's.

Q. About what time elapsed between your leaving Mr. Murdock's house, in company with Mr. Murdock and Mr. Kaulback, and your reaching Mr. Kaulback's. A. I judge about 20 minutes or half an hour. I was partially in conversation with Mr. Murdock and Mr. Kaulback. I don't remember exactly what. It referred to the lot of land of Mr. Kaulback. It wasn't worthy of remembering.

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Q. Why do you state it was not worthy of remembering? (Mr. Weatherbe objects, that answer is sufficiently clear, and that question is trifling. Judge rules question out.)

Q. Where did you dine that day? (Mr. Weatherbe objects, that question is trifling and irrelevant. Question withdrawn.)

Q. How long did you remain at Mr. Kaulback's house in company with Mr. Murdock on the day referred to by you? A. A short time after dinner or lunch.

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Q. How long did you remain in company with Mr. Murdock at Mr. Kaulback's house on the occasion referred to? A. I should Judge between two and three hours. I don't remember exactly. I was in conversation with Mr. Murdock during that time.

Q. What were the subjects of conversation between you and Mr. Murdock on that occasion. (Mr. Weatherbe objects, that it has been suggested to the witness that there were different subjects of conversation. A. He was speaking about the education of the children, in which he appeared to take an interest. Some Theological subject, I forget exactly what point. That's all that I remember.

Q. How did he argue on that occasion? (Mr. Weatherbe objects, as not the proper form of question. Judge admits question.) A. I remember that it was a theological, and I also remember that he argued intelligently. (Objected, time being too remote.) 3080

Q. On that occasion at Mr. Kaulback's house, was Mr. Murdock in conversation with others, in your presence and hearing? A. The family were passing in and out of the room. He was in conversation with Mr. Kaulback part of the time. I can't remember distinctly of others.

Q. How did Mr. Murdock converse with Mr. Kaulback and yourself on that occasion? (Mr. Weatherbe objects, as question calls for an opinion as to the state of Mr. Murdock's mind at a period too remote from examination of the will. Judge admits question.) A. I found his conversation intelligent and his memory clear. I dined with Mr. Murdock that day.

Q. Where did you dine with him that day? (Mr. Weatherbe objects, that same question was previously asked, objected to, and withdrawn. Judge admits question.) A. At Mr. Kaulback's house. 3090

Q. Who else dined with Mr. Murdock and you upon that occasion? (Mr. Weatherbe objects, being irrelevant, remote and trifling. Judge admits question.) A. Mr. Kaulback, his wife, and the younger members of his family.

Q. You stated in your evidence you thought you remained three or four days in Lunenburg on the occasion referred to. Did you meet and converse with Mr. Murdock at that time, on other occasions than those mentioned by you. Particularize during that visit? A. I drove to the lower Church in company with Mr. Kaulback, Mr. Murdock and Rev. Mr. Ellis.

Q. Had you conversation with Mr. Murdock on that drive? (Objected to as too remote.) A. I had conversation with Mr. Murdock which finally merged into argument. 3100

Q. From the conversation referred to during that drive, how did he converse or argue? (Mr. Weatherbe objects that it is irrelevant and remote and subject of opinion. Judge admits the question, subject to the objection.) A. In a very gentlemanly and scholarlike manner. The whole tone of his bearing and conversation exhibited mental vigor. I am not aware of the distance from here to the lower Church, at the river.

Q. Were they repairing that Church at that time, and if so, did Mr. Murdock make any suggestions with respect to the same? (Objected, period too remote and evidence immaterial.)

Q. Did Mr. Murdock return with you to Lunenburg on that occasion? A. He did. We went to Mr. Kaulback's house on our return about sundown.

Q. In what state of mind was Mr. Murdock on the different occasions you met him in June, already referred to by you? (Mr. Weatherbe objects on account of the remoteness of the evidence and that the same calls for opinion, without any facts. Judge admits the question subject to the objection.) A. Undisturbed and healthy. 3110

Q. Did you again meet Mr. Murdock during the month of June, 1875, and subsequently to your visit to Lunenburg, and if so, when and where? A. I met him subsequently somewhere about the 18th of June some year at New Ross. Hon. Mr. Kaulback, Edwin Kaulback, and Mrs. Henry Kaulback accompanied him. Mr. Murdock remained there I think some three or four days. I was busy attending to Parochial work. It might have been longer.

Q. Relate what transpired with respect to Mr. Murdock on that occasion. A. I met him at Squire George Ross' house, in the Church, and at Mr. Pratt's. There was a wedding party at Squire Ross' house on the Saturday previous to the Sunday I met him in Church. At the wedding party he proposed a toast, and delivered a very neat and appropriate speech on that occasion. After dinner we adjourned to the parlor and entered into general conversation, which terminated in argu- 3120

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ment. That argument was on the origin of Protestantism. He showed in that argument a clear knowledge of history, and corrected in some misquotations. Having a sick call I was suddenly called away, and did not see him again till next day at Church. The Rev. Mr. Moore preached a sermon, upon which Mr. Murdock afterwards commented and spoke of the touching language in which Mr. Moore had delivered it, and how it accorded with his own feelings. I do not remember any further conversation at that time. I had my duties to attend to. New Ross is 36 miles from Lunenburg. The state of the roads from Chester Basin to New Ross (about 14 miles) is very bad and rough. He (Mr. Murdock) appeared to be in the ordinary state of health in which I found him before 3130

Q. From the conversations you had with him there and the arguments referred to by you, what was the state of his mind? (Mr. Weatherbe objects on ground of remoteness, and being only matter of opinion.) A. I perceived no difference at that time from times previously. His mind was then clear and vigorous.

Q. Were you a medical student previous to your admission to the ministry? (Objected as irrelevant and leading.) A. My College course for a missionary included Clinical lectures. I next met Mr. Murdock in Lunenburg latter part of October. Squire George Ross accompanied me on that occasion to Lunenburg. I met Mr. Murdock on that occasion in the house at present occupied by Mr. Kaulback, being the same house occupied by Mr. Murdock in June. I found Mr. Kaulback there. 3140

Q. On first going to the house, whom else did you find there besides Mr. Kaulback? A. Mrs. Kaulback. Afterwards I saw Mr. Charles Beamish there, and there was another gentleman with him (E. J. Tobin) from Halifax. Squire George Ross, of New Ross, was present too. At that time Mr. Murdock made me a present of a Hebrew Testament and a Hebrew Lexicon, and wrote his name in them.

Q. Relate the circumstances that led him to give you these books. A. I told him that I had lost most of my library on the West Coast of Africa and found it very hard to replace it. He told me I might look among the books on his shelves and if I found here any theological works that I wanted I was welcome to them. In the search I found this Hebrew Bible, and said that was all I would ask. He took the book, wrote his name in it, and handed it to me with his compliments. Then he stated that he had a Hebrew Lexicon, which was a companion to this Bible, and he got up then to search for it, and having found it, wrote his name in it and gave it to me. He went on to speak about the Hebrew language, and gave me his reasons for having studied it. In the course of this Mr. Beamish and his friend came in. Mr. Kaulback notified Mr. Murdock of Mr. Beamish's visit and Mr. Kaulback then went out of the study to attend to the comforts of Mr. Beamish. In the meantime Mr. Murdock expressed himself dissatisfied with the visit of Mr. Beamish, but Mr. Kaulback prevailed afterwards on him to receive him. Thinking that I might be intruding I went out for a stroll. After my return therefrom Mr. Murdock was in the same state of dissatisfaction respecting the visit of Mr. Beamish, and wished to go to Mahone Bay. I offered him a seat in my carriage, as I purposed returning home that afternoon. Mr. Kaulback tried to prevail on Mr. Murdock to remain and entertain Mr. Beamish. He seemed, however, determined upon going to Mahone Bay. I determined to remain over night rather than take him, as I saw no other way of escape from the invitation I had given him. I left the house towards evening, and the next morning returned home, and that was the last I saw of Mr. Murdock. 3150

Q. You stated that you did not wish to take Mr. Murdock to Mahone Bay the afternoon referred to, in accordance with your invitation, why was that? (Mr. Weatherbe objects that the reasons of the witness do not constitute evidence. Judge rules question out.)

Q. What reason did Mr. Murdock give, if any, for wanting to go to Mahone Bay on the occasion of Mr. Charles Beamish's visit. A. He said that he did not wish to enter into any business transactions with Mr. Beamish. 3160

Q. Then, what reason did he give for wanting to accompany you to Mahone Bay.

Mr. Weatherbe objects to question as leading the witness, and that Mr. Murdock's language has already been given.

A. Mr. Kaulback was prevailing upon him to enter into business transactions with Mr. Beamish, whatever they were I know not, and Mr. Murdock expressed a wish to escape all these transactions by going away. 3170

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Q. Did Mr. Murdock state why he did not wish to see Mr. Beamish?

Mr. Weatherbe objects that this is persisting in leading the witness, who has already given the language used.

Q. What did Mr. Murdock say on that occasion with respect to Mr. Beamish? A. He said 3180 that he didn't want him (Mr. Beamish) to be interfering with his business.

Q. Was Mr. Beamish prevented by Mr. Kaulback from having private interviews with Mr. Murdock, at the time you referred to, when Mr. Beamish visited Lunenburg in October last. A. I saw no prevention.

In October, and on other occasions when I saw Mr. Murdock his dress and appearance was neat but old fashioned. In October Mr. Murdock said that while he regretted the loss of Mr. Kaulback's house by fire, and Mrs. Kaulback's loss of old family relics by the same fire, yet he was glad to have the opportunity of returning past favors in offering them a refuge under his own roof. That is the substance of what he said. From the time I first saw Mr. Murdock, up to and including the time of my last interview in October, he referred to Mr. Kaulback in terms of friendship, to Mrs. Kaulback in terms of respect, and to the children in terms of affection. (Objected to as irrelevant.) From the interviews I had with Mr. Murdock on different occasions, I always deemed him a man of intelligence and learning. (Objected to as matter of opinion.) 3190

Cross-examined by Mr. Weatherbe.

I did not prepare my evidence in writing. I had a paper simply with dates of my being here. I got my dates from a diary. But I didn't use the paper at all. I had the date of the marriage Mr. Murdock went to attend. Shortly after first part of June. When I was at Lunenburg. I think I gave evidence in my direct examination of all the conversations I had with Mr. Murdock after June. I don't recollect any other conversation I had. I went to Mr. Murdock's house in October visit with Squire George Ross. I didn't know how long Mr. Kaulback had been living there then. I did not see Mrs. Peck there in October. I remained in Lunenburg on that occasion three or four days. Stopped at the Scotia House. I visited Mr. Murdock in latter part of the forenoon. I was introduced to Mr. Beamish at Mr. Murdock's house on that occasion. I was there before Mr. Beamish. I am not aware whether Mr. Beamish had been at the house before on that day. On this occasion Mr. Beamish and Mr. Tobin were announced at the same time, and I was introduced to them at same time. Don't remember exactly what time of day this was. 3200

When I was introduced to Tobin and Beamish, Mr. Kaulback, Squire Ross and Mr. Murdock were present. I left the house only because I did not wish to intrude. The time I was about leaving the house for the stroll, was not about the time at which I was introduced to Mr. Beamish and Mr. Tobin. I left for the stroll after Mr. Beamish came. I left the house for the stroll in consequence of Mr. Beamish's arrival and after the introduction and passing the usual civilities. I couldn't say how long after Mr. Beamish's arrival I left. I can't say it was quarter of an hour, or twenty minutes. I can't say whether it was half an hour. I don't think it was an hour. I couldn't give any idea whether it was half an hour. I don't know how long the introduction and civilities occupied. There was nothing else to, or which did detain me. I was called from the stroll to dinner. Mr. Kaulback's little girl came down to the wharf for me. From the announcement of Beamish and my leaving for the stroll, there was no conversation passed, except the common courtesies and about the weather. Except coming to announce myself, I was not present during evidence. I heard none of it. Previous to giving my evidence, I heard that Mr. Beamish and Mr. Tobin had given evidence at the previous court. (Objected to as being hearsay.) But had heard nothing of their having done so lately. 3210 When I returned from stroll, Mr. Murdock still shewed dissatisfaction at Mr. Beamish's visit. When I returned from stroll the room I first went into was the parlour, then to lunch, and then into the study. I don't remember which room I got lunch in. When I went into the parlour, as referred to. I first saw Mr. Kaulback's little girl. I don't remember whether I saw Kaulback, Beamish or Murdock before dinner. I can't say whether Mr. Murdock was at dinner that day. Squire Ross was at dinner. I can't say whether I saw Murdock, Beamish, Kaulback, or Ross, first on that occasion after dinner. I can't say that I saw Mr. Beamish before dinner after the stroll. I can't say whether I saw Murdock, Beamish, Kaulback or Ross, before dinner after the stroll. I have no recollection of particular persons on that occasion at lunch except Mr. Ross. After lunch I can't say which room I went into, direct from lunch, whether the parlour or study, or what room, but there was a time shortly after 3220 3230

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lunch, when I remember being in presence of Mr. Beamish, Mr. Murdock and Mr. Kaulback. There may or may not have been others. This was the first occasion I was in their company since the introduction. I have no recollection of seeing these persons at lunch, or for a short time after lunch, until the time of meeting them in the study. The first time, I'm prepared to swear I saw Mr. Murdock after the stroll, is when I saw him with these persons in the study. I may have seen him before. (The judge allows witness to explain) I object to the words "the first time I'm prepared" as they conflict with the words "I may or may not." I don't remember how long I remained in the study. It could not have been a great while. Whether they went out first, or I did, I'm not prepared to say. I saw Mr. Murdock drink something this day, it was either whiskey or brandy with water. I'm not certain, I can't say whether the others partook or not. He was not the worse for liquor. I will not undertake to say how many times he drank in my presence during the whole day. I don't think he drank more than twice in my presence. Once I think in the morning and once I think in the afternoon (by morning I mean forenoon.) When Beamish, and Murdock, and Kaulback were present in the afternoon, part of the conversation had reference to some papers, which apparently to me, belonged to Mr. Murdock, but were held by Mr. Beamish. I have heard Mr. Murdock quote poetry. Can't remember particularly his conversing on poetry. I don't know whether he made any poetry at New Ross on a ladies eyebrow. I don't know of his having a fancy for a Miss Crowe in Lunenburg. I don't know that he had a weakness for women, young or old. I never knew that he had a particular fancy for young women. I never heard that he had a positively defined desire for kissing young ladies hands. I never heard that Mr. Murdock had fallen desperately in love with a young lady in Lunenburg of the age of 17. 3140

Q. Had you an average knowledge of Mr. Murdock's character and habits while he was in Lunenburg? A. My answer would depend on Mr. Weatherbe's definition of the word "average." 3250

Q. Will you answer the question? (Objected to, on the ground that the question is a trap question, as the witness has already stated in his direct examination, the sufficient occasions on which he had met and had conversations with Mr. Murdock, and given the nature thereof, and also because witness has asked for an explanation, which Mr. Weatherbe has declined to give him. (Judge admits the question.) A. I will answer the question with my idea of the definition of the word average. (Objected.) I have not a definite idea of the character and habits of Mr. Murdock while he was in Lunenburg. In the afternoon referred to, when Mr. Beamish, Mr. Murdock, Mr. Kaulback and myself were together, during the afternoon, after dinner, Mr. Beamish and Mr. Murdock had conversation respecting the papers which Mr. Beamish then held in his hand. As far as I can remember, Mr. Beamish asked where he should place them. Mr. Murdock gave him his keys, pointing to a box at the side of the room; desired him to place the papers in that box, which Mr. Beamish did, returning the keys to Mr. Murdock after locking the box. That is the only part of the conversation I remember. I was present with Mr. Murdock after the transaction respecting the papers, in his garden. The conversation there had reference to matters in the garden, and no other subjects. Afterwards we were again in the study, that afternoon. Mr. Murdock and Mr. Kaulback were then present. We then had conversation about going to Mahone Bay, and Mr. Murdock expressed his dissatisfaction, Mr. Kaulback prevailing on him to give up the object of going to Mahone Bay. Mahone Bay is on the road to Chester. The subject matter of the conversation was Mr. Murdock's persisting in going to Mahone Bay and my urging him not to go, as Mr. Beamish was in town. Mr. Kaulback also urged him to remain too. He wished him to see Mr. Beamish and fix up business matters. He did not say that he wished to see any one particularly at Mahone Bay. All that I can recollect is, that Mr. Murdock wanted to go to Mahone Bay, and persisted in the idea of going. I cannot say that Mr. Murdock did or did not express a distinct desire to see some particular person at Mahone Bay or Chester, as a reason for his going there. I heard him say that if I did not take him he would go in the coach. 3260

Q. Do you know, or did Mr. Kaulback tell you, that Mr. Murdock came into the room at 9 or 10 o'clock at night, dressed to go in the coach, although the coach went next morning? A. I did not know it, and I did not hear it, neither did I hear that Mr. Kaulback ordered him to go and take off his clothes. I thought he was quite stubborn about the subject of going, because it prevented my going. 3280

Q. Will you be good enough to state why, since he desired to go, and you also desired to

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go, you did not go and take him with you? A. Because of the evident wish of Mr. Kaulback for him to remain, and because of my idea of the sense of courtesy which he owed Mr. Beamish.

Q. Did I not understand you to say that you were only introduced to Mr. Beamish, for the first time, that day? (Objected.) A. Yes, I did. The sense of courtesy I thought he should manifest to Mr. Beamish was because I thought he was some relation to him. There was no other sense of courtesy I thought to be due. I urged him to remain; that if he had business relations with Mr. Beamish, he had better remain. 3290

Q. Did he say anything in reply? A. He said he did not want Mr. Beamish to interfere with his business.

Q. Were you aware that the only business Mr. Beamish had was giving him an account of how he had appropriated and expended monies? A. Only from the facts of the presentation of these papers, before referred to. I merely urged, without bringing forward, claims of relationship.

Q. I understand you to say that the lateness of the hour, urged to Mr. Murdock for not taking, was a mere pretext. (Mr. Owen objects on the ground that witness has not stated that it was a mere pretext, as will appear by the evidence, also on the ground of illegality and suggesting the answer.) A. Yes, I did say so. I gave up going, so that I might not have to break my word in promising to take if I went. I say I thought he was self-willed in persisting in going. 3300

Q. Did you think that Mr. Murdock persisted in going away from Lunenburg on that occasion to an inordinate degree. A. I would not consider it inordinate. I should consider inordinate to mean outrageous. I should not say he persisted to an unreasonable extent, the man may have had his own reasons. I am not in a position to judge whether he persisted to an unreasonable extent or not. From the fact of Mr. Murdock's saying that he did not wish Mr. Beamish to interfere with his business, concluded there was other business to be done.

Q. If Mr. Beamish Murdock had no other business than the passing of the papers, and in relation thereto, which was transacted in your presence, was his persistency in leaving Lunenburg, and his writing that he didn't wish Beamish to interfere, in your opinion, unreasonable and childish? 3310

Mr. Owen objects on the ground of illegality and being a trap question, and reasoning with the witness, and also on the ground that Mr. Murdock may have had private reasons of his own, of which witness knew nothing, for desiring to go to Mahone Bay and also on the ground that witness has already given as one of the reasons for Mr. Murdock's desiring to go there, that he expressed dissatisfaction toward Mr. Beamish.

Judge admits the question.

A. I feel that I'm not in a position to give an opinion. 3320

Q. If, in point of fact, the whole business between Murdock and Beamish was finished up on the passing of the papers, which you witnessed, considering the reasons urged by Murdock for leaving Lunenburg, including the reason urged that he didn't wish Beamish to interfere in his business matters, and considering that the business matters were merely accounting for monies he had appropriated, do you consider his determination to leave Lunenburg that afternoon, against the expressions of yourself and Mr. Kaulback, unreasonable and childish or either?

(Mr. Owen objects, being a trap question, reasoning with witness, and for other reasons given in objection to preceding question.)

(Judge rules question out as being already answered, and as being a trap question evidently.)

Not knowing the causes which seemingly produced ill feeling in Mr. Murdock's breast, against Mr. Beamish, if they were of that nature to produce righteous anger, I would not deem Mr. Murdock unreasonable. Of what those causes were, I have no knowledge and therefore am not in a position to give an emphatic judgment. I judged that there was ill feeling in Mr. Murdock's breast against Mr. Beamish, but was not curious enough to know the causes. I have no knowledge of the cause, nor did he disclose any in my presence, for this ill feeling. I don't remember of his exhibiting this ill feeling to Mr. Beamish himself. I have no knowledge or remembrance that Mr. Kaulback urged on Mr. Murdock his relationship to Mr. Beamish, as a reason that he should remain in Lunenburg while he was here. The last time I saw Mr. Murdock on that occasion, Mr. Kaulback urged as a reason for his remaining, that he had some unfinished business with Mr. Beamish. That was the only reason urged by Mr. Kaulback that I recollect. 3330 3340

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Q. Are you prepared to swear that Mr. Murdock did not drink four or five times in your presence that day? A. I have only remembrance of his drinking once in the morning and once in the afternoon. He had a glass of liquor which he was sipping. Mr. Kaulback did not tell me what quantity of liquor he supplied Murdock with. I never conversed with Mr. Murdock on the subject of liquor or drinking. He never mentioned the subject of his favorite drink to me. I think that rye whiskey was the only drink I have any remembrance of, in the house. In June, as referred to, Mr. Murdock spoke to Mrs. Peck as a master would to a servant. It was a direction with regard to some domestic affair, don't know what.

Q. Do you know of Mr. Murdock having executed several papers purporting to be wills while at New Ross? (Mr. Owen objects, not being evidence, and Mr. Weatherbe not having given notice to produce alleged wills, cannot give secondary evidence thereof, and also that the question is a trap question as the word "executed" in the question would imply that the same was duly executed according to law. Judge rules question out.) 3350

Q. Do you know of Mr. Murdock's having signed several papers purporting to be wills, while at New Ross? (Objected to for reasons as given to previous questions.) A. I never saw him sign any paper.

Q. Did Mr. Murdock tell you anything about it? (Objected to as above.) A. No, he never told me anything about it. I never heard him tell any one else. I did not see him sign a will in presence of Mr. Ross. Mr. Murdock told me nothing about making a will at all, while he was there. I have no recollection of Mr. Murdock having prepared a will and having it in his room before he went to New Ross. I knew nothing of his coming to New Ross until he came. I will not undertake to swear to any single article that was on his table on my visit in June. When I was looking at the books Mr. Murdock and Mr. Kaulback were talking behind me. I paid no attention to what they were saying or doing. I cannot say that my back was towards them all the time. I have no recollection that either Mr. Kaulback or Mr. Murdock left the room while I was looking at the books. I was deeply interested in the books, looking for some special works. I cannot swear that Mrs. Peck did not come in the room the second time on that occasion. I have no recollection of anything respecting the door whether Mrs. Peck shut it or not when she went out. I looked at her over my shoulder when she came in and went on looking at the books. I saw nothing in her hands. I took no particular notice of it. Having no recollection I cannot swear she had nothing in her hands. I saw neither tumblers nor water. I am not prepared to swear that she did not bring those things in, as I have no recollection. I did not see her do so. I don't know whether Mr. Murdock summoned her into the room or not, or what he said, or whether he gave her an order. I heard no orders, therefore I can't swear. Having no recollection, I cannot swear whether he gave her an order to bring tumblers and water. 3360 3370

I am prepared to swear that I drank no water in the house that day. After the fire, I drank some rye whiskey in the house. I only made one visit to Mr. Murdock's house in June.

JOSEPH W. NORWOOD.

Sworn to at Lunenburg, in the County of Lunenburg, this 12th day of August, 1876, before

me.

[Signed] GEORGE T. SOLOMON,
Judge of Probate. 3380

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COURT OF WILLS AND PROBATE.

CO. OF LUNENBURG SS.

In the matter of the proof, in solemn form of law, of the alleged last Will and Testament of Beamish Murdoch, late of Lunenburg, in the County aforesaid, Barrister-at-Law, deceased.

The examination of Rev. William Ellis, of Sackville, in the County of Halifax, taken before me, George T. Solomon, Judge of Probate of said County of Lunenburg, this fourteenth day of August, A. D. 1876, who, being duly sworn, deposeth and saith :

I am a clergyman of the Church of England. I was ordained in 1861, and have been acting in that capacity from that time till the present. I resided in Lunenburg for some time. I came to Lunenburg the 12th of March, 1874, and remained until 1st July, 1876. While in Lunenburg I was assistant minister of the parish. I am now the incumbent of Sackville, County of Halifax. I was acquainted with the late Beamish Murdoch, from the time I first came here up to within three or four days of his death. I first met him in Lunenburg, in his own house, some time in the spring of 1874. 3390

Q. Were you in the habit of meeting him seldom or frequently after that? (Mr. Weatherbe objects on ground that counsel has already led the witness, whether he was in the habit of meeting him frequently; and besides that, as at present put, the question is leading.) Judge admits the question, subject to the objection. A. I met him very seldom before he left for Halifax. I saw him more frequently when he returned, and, I should say, for the last five or six months, once or twice a week on an average. Previously to Mr. Kaulback's fire, I was most frequently in the habit of seeing Mr. Murdock at Mr. Kaulback's house; seldom saw him anywhere else. Occasionally saw him at his own house previously to that date. 3400

Court adjourned until 2 o'clock P. M.

Q. What was the date of that fire and burning of Mr. Kaulback's house, referred to by you? (Mr. Weatherbe objects, on the ground that counsel has told witness the day of the month, by having first put the question in a different shape, and then withdrawn it.) Judge admits the question. A. It was about the latter end of July or the beginning of August last. Between the time of the fire, about first of August last, and that of Mr. Murdock's decease, I was in the habit of visiting him about once or twice a week, on an average. I visited him in the capacity of one of the ministers of the parish. I was in the habit of visiting him in his own house (after the fire). I went there mostly for the purpose of conversing with him. We were in the habit of conversing on different subjects—sometimes religious subjects, and sometimes in connection with his own life, and occasionally on political matters. I cannot tell you any more on the subject of conversations. You asked me the subjects. Before the fire I was in the habit of conversing with him on general subjects. (Objected to as remote.) 3410

Q. From your conversation and knowledge of Mr. Murdock about the time of the fire, what was the state of his mind? (Mr. Weatherbe objects, evidence too remote and matter of opinion. That even according to American authorities, no opinion could be received without the fact upon which it was based. (Quotes Jarnin on Wills, page 77, note.) That there is no English authority for receiving opinion at all. That this witness has given no conversation whatever. That to receive opinion without the facts would prevent the application even of the American rule of calling other witnesses to controvert that opinion, by submitting the same facts, and that it would be unfair to petitioners, inasmuch as they have not had an opportunity of calling for opinion without facts.) (Judge admits the question, subject to objections raised, reserving his opinion upon the point.) A. I considered that it was very clear, he certainly knew what he was about. I should never have dreamed of 3420

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thinking him an insane man, if I had'nt heard something about it afterwards. On the occasion from time of fire up to a few days before his decease, when I visited him once or twice a week. I had conversations with him the same as mentioned. (Objected to on same grounds.) I found him most clear. There was one conversation about Sir George Westfall. He gave me his history. That he was a poor boy who rose by his own merit and got into the navy by the influence of the Duke of Kent. Another time he told me about the Tribune. Another time he told me of his experience in the House of Assembly and how he came to lose his election. On religious matters he held views I can't say peculiar to himself. I have seen them held by others. He held his views tenaciously. I always looked upon him as a man of very strong will and determination. (Objected to and received as before.) I have entered into arguments with him on two or three occasions. There was one on an occasion when we were driving to the Ferry with Mrs. Kaulback, Mr. Norwood, Mr. Murdock, and myself, since he moved into the house in which he died. On another occasion at New Ross. He argued clearly and logically. (Objected to and received as before.) I always found his memory good. His was better on some subjects than my own. That is of course on these subjects. I could'nt enter into household matters such as those who lived in the house could enter upon. I always found him ready enough to find a book or anything of that sort. I never found any difference in the state of Mr. Murdock's mind from the time I first saw him up to the last time I saw him. I saw him on the Sunday before he died and his mind was then as clear as it ever was. I had conversation with him on that Sunday. He spoke of his own state of health, and the Kaulbacks (the Senator and his wife.) Spoke of their journey and that he had lately received letters from them. I have heard him on other occasions refer to Mr. and Mrs. Kaulback and family. Yes, at numerous times. He always spoke in the most kind manner of them. In the kindest manner in which a man could speak, and with regard to the children, that he looked upon them as his own. At the time of, or rather on the morning after the fire, I saw Mr. Kaulback and Murdock meet (a group of people present close by. Miss Gaetz and Wm. Gaetz were there.) Mr. Murdock expressed his regret, like any other gentleman, in a most sensible, feeling way. He (Mr. Murdock) offered him the use of his house, and told him it was his to use as long as he thought fit, and expressed his pleasure at being able to requite the Senator and his family for the kindness he had received, by making this offer. During the whole time of my acquaintance with Mr. Murdock, I never knew him to be under the influence of or affected by whiskey or liquor. I remember only one instance, that he made reference to Charles Beamish, just after he had visited him. Within a day or two after Mr. Beamish's leaving, about the extreme end of October or the commencement of November. He seemed very much disturbed in mind and indignant at the treatment he'd received at Mr. Beamish's hands. He said it was a very hard thing, that his friends cared more for his money than they did for him. He spoke of Mr. Kaulback and contrasted his kindness to him with the unkindness of his friends, (by which I mean relatives.) I think there was something said about undue influence. All I can say is, I never saw any.

Q. By whom? A. By Senator Kaulback and his wife.

Q. Did you hear Mr. Murdock ever refer to Senator Kaulback or his wife in any other than terms of friendship and respect, and did Mr. Murdock ever state to you that Senator Kaulback or his wife had ever attempted to unduly influence him. A. Never.

I met Mr. Murdock in his garden once or twice and talked to him there. Once soon after he went there, when he shewed me the place. Once when Mrs. Kaulback was there in the garden and once I went to see him and he was working in the garden. I opened the window. This was last summer, that's all I can tell about that. I remember the facts because the first time Mr. Murdock had only been there a short time and showed me the place, and how he'd had it fitted up. The second time, because I went out with Mrs. Kaulback into the garden to see the things growing there, and what had been planted. The third time, because I called to him from the study window. I didn't go out. I can only state with reference to the first conversation, that he showed me the extent of his lands and so on. I never took any meals at Mr. Murdock's house before the fire, but after the fire occasionally. I think I said that I had conversations with Mr. Murdock on those occasions. If it hadn't been the case I wouldn't have said it. Such certainly was the case. Previously to the fire I was in the habit of taking meals with Mr. Murdock at Mr. Kaulback's house. I have seen Mr. Murdock play chess once or twice. I am no chess player myself. I witnessed a will of the late Beamish Murdock, signed by Mr. Murdock. Mr. George A. Ross and I

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witnessed it, in presence of Mr. Murdock, and in presence of each other, dated 27th August, 1875.

Q. Was Mr. Murdock of sound disposing mind and memory on the 27th day of August, 1875?

Mr. Weatherbe objects on the ground that we are not proving the will in solemn form, that the evidence of the sanity of the Testator must be confined to the period in question at which this Will was made. That this Will is not yet proved in common form. That this Will is produced under a notice on part of Petitioners to show the weakness of the deceased in the numbers of Wills made, and the influence obtained by Kaulback, and no evidence can be given generally without making a new case, not covered by this petition. That the evidence tendered, is not pertinent to the issue we are trying.)

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The Judge decides in consequence of the Proctor on the part of the Petitioner, having given notice to the Proctor on the part of the Respondents, promoting the Will, to produce the Will, bearing date 27th day of August, 1875. If required to be given in evidence. I adjudge the question put to the witness under examination, (and a subscribing witness to said Will, to speak as to the sanity of the Testator at the time of the execution thereof.)

A. Certainly he was.

Q. Was he of sound disposing mind and memory at the time of the execution of said Will, in the presence of yourself and Geo. A. Ross, on said 27th day of August, 1875.

Mr. Weatherbe objects on the grounds already given.

A. Certainly he was.

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Mr. Owen now tenders a Notice to Produce, served on him by Mr. Geo. A. Ross, the associate Attorney of Robert L. Weatherbe, Proctor in this cause.

Mr. Weatherbe objects that no proof has been given of any notice.

On the occasions of my visits to Mr. Murdock his dress and appearance was just as it should have been, and as I expected to find it, clean and neat.

Mr. Murdock spoke to me about some letter he had given Mrs. Peck to post and that she had acted as a traitor, as I understood it, she took the letter to Mr. Kaulback. He appeared to be very indignant at her conduct in the matter.

Cross-examined by Mr. Weatherbe.

It was just after Mrs. Peck left that Mr. Murdock spoke about the letter. We were alone. He introduced the subject to me. I know nothing about how he found out about the letter. Mr. Kaulback was not present. He did not tell me who the letter was addressed to, nor that it was addressed to a Miss Crowe, to whom he had proposed and whom he wished to marry. I have heard he wanted to marry Miss Crowe. I can't say Mr. Kaulback told me. I heard Mr. Kaulback joke with him about it once or twice. I don't know how old she was. He didn't tell me Mr. Kaulback told him about letter. I did not hear Mr. Kaulback speak about the letter. Mr. Murdock said with regard to the letter, "I wouldn't have minded, if she hadn't proved a traitor. I gave her a letter to post, and she put it upon Kaulback's desk." I don't know where the desk was, understood in the office. I don't know where he meant by the desk. I thought he had but recently discovered it, from his speaking of it just then. This was about ten days after the Kaulback's had moved into Murdock's house. Murdock didn't say he had ever mentioned the subject to Mrs. Peck.

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Q. Suppose that Mr. Murdock had no recollection of anything scarcely, that he didn't care what he got to eat, that he had to be dressed, undressed, and put to bed like a child, and cleaned and washed like a child, that he hadn't control of himself, that he would get up in the night and roam about the house, and the nurse had to come down and get him into bed, that he would seem frightened and excited when the nurse came to him, that when he put any thing away he couldn't find it, that it made no difference what it was, that he couldn't find his things, that he forgot his valuable gold watch in the privy, that he didn't know Sunday from Monday, and the nurse was obliged to call him in twice the same Sunday morning, from working in the garden, when he admitted that he didn't know it was Sunday, that he would fall down on his back between the rows of potatoes, and make no sign and have to be searched for in the garden, that he would allow Mr. Kaulback to carry Rye whiskey in a jug to him at night and leave it at the house, although he complained that he didn't wish Mr. Kaulback to supply him, that he could supply himself with liquor, and still would allow the practice to be repeated again and again, to the

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extent (as Mr. Kaulback admitted himself in the Supreme Court) of two gallons a week, that he confided to the nurse his strong love for Mrs. Kaulback, and his desire to run away with her in a yacht, and that he had been caught in kissing her in Mr. Kaulback's house, and that he had kissed her in his own house, would you suppose Mr. Murdock to be of sound mind, or would you suppose him to be imbecile and childish in his understanding?

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Mr. Owen objects to the question, 1st., on the ground of the question being based on a supposition which has been already repudiated by the witness, he having already proven him to be of sound and clear mind and memory, from the time of his first acquaintance with him, to about the time of his decease. 2nd., that it is reasoning with the witness. 3rd., that it is asking witness for his opinion, contrary to law and the rules of evidence. 4th., that it is a trap question.

Mr. Weatherbe cites in reply, 2nd Greenleaf, Sec. 691.

Judge rules question out.

I did not hear Senator Kaulback say anything about undue influence, I was referring to outside rumours. (Objected to as hearsay.) I mean that it was common talk. I was inside of Murdock's house (in which he died) previous to Kaulback's moving into it, about a dozen times. I had met him at the Kaulback's, once at the Gaetz's, and at New Ross. I don't know who introduced me. I believe he held Universalist views. He did not believe in the Divinity of Christ. He said that Christ was a good man. I believe he persevered in that view to his death. He held his own in the arguments we had. I can't say he was insane on this point. I've heard many sane men enunciate the same principles. I said I could not tell anything more as to the subjects of conversations. I could not repeat more of the conversations in full. I could give some particulars. I couldn't give words. He told me of his friend desiring him to enter the Church in his youth and that he had conscientious scruples to it, that if he entered the Church he'd have to teach the Church's doctrines, that his mind revolted from teaching what he didn't conscientiously believe. That he thought the government of the Church of Rome was more in conformity with his views. I don't remember that he gave any reason for not going into that Church I should consider Mr. Murdock an Unitarian. I did not consider him a Roman Catholic, nor nearer that than a Universalist or Unitarian. Certainly he was not an infidel. I considered him perfectly sane on the subject of religion and Christ, perfectly sane. As sane a man as I ever met. I did not consider his arguments sound. I can't repeat the substance of any other conversation. I know of two other conversations, but couldn't repeat substance. He conversed very often on his views of Christ. Before he went to Halifax, I conversed with him and was aware of his views on that point. I had the conversation with him about his entering the Church, before he went to Halifax, in one of the rooms of his house, before the Kaulbacks went to live there. I knew of the poetry he made after the fire. He conversed with me about it, and I knew the nature of it. (Mr. Weatherbe calls for the poetry that Mr. Murdock made on the subject of the fire. I have conversed with him on the subject of the contents of this paper marked "Q." "G. T. S.," (put in and read by consent.) I went to Murdock's house when I witnessed the Will. I got a message to go, but do not know from whom. I do not know who was acting as his (Mr. Murdock's) lawyer at the time. Do not know who brought that message to my lodgings. I went there alone. I think Mr. Kaulback was with him when I went there. That is my signature to that paper. I signed it myself. [Paper marked R, G. T. S.] The writing in the body of that paper is not in my hand-writing, nor do I know whose writing it is in. I know the usual beverage indulged in by Mr. Murdock. It was Rye Whisky and water. He frequently produced it, and kept it in a cupboard in his room. Generally kept it in a bottle. I do not think he generally kept glasses in his cupboard. I do not remember any special occasion when two or three were present, that he did not produce it. (Objected to, question being a trap question.)

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Q. How often did you see Mr. Murdock drink on the occasion you went to witness the will? (Mr. Owen objects on the ground, 1st, that witness has not stated that he saw Mr. Murdock drink at all on that occasion, and that the question is a trap question.) A. I did not see him drink at all before the execution of the will, but he did afterwards in the evening. On the day that I witnessed the will, I think he made some allusion to Charles Beamish. It was to the effect, I think, that there was some provision in the will for him. He did not mention that he had changed his views with regard to him, nor did he speak of him as his friend. I didn't know that he had made any former will. He volunteered the statements with regard to Mr. Charles Beamish when we were alone. Mr. Kaul-

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back mentioned to me nothing of the particulars of the will. I don't think Mr. Kaulback was the person who sent to me to witness the will. When I arrived at the house Mr. Murdock told me he wished me to witness the will. Before the will was signed, there was no conversation between Mr. Kaulback and myself. Mr. Ross was there before the signing of the will, and Mr. Murdock told me he was coming to witness the will. Mr. Kaulback spoke to me before the execution of the will. Mr. Murdock himself and no person else that I'm aware of was present at the time. I swore that before the will was signed there was no conversation between Mr. Kaulback and myself. I didn't know the particulars and that was why I said there was no conversation with reference to it. I don't remember any conversation with Mr. Kaulback previous to execution of the will, except that he may have said, how do you do, or something of that kind, when the will was produced for signature. Mr. Kaulback said to me you had better read the will clause by clause, to Mr. Murdock, that he may know exactly either what he is signing, or what the will contains, I don't know which. (Mr. Weatherbe here asked the witness whether he had answered all the questions fully that had been asked him, and whether he had had full time to give his answers, and he said yes, but it was my intention, when I stated that Mr. Kaulback said "you had better read the will, clause by clause, to Mr. Murdock, that he may know exactly either what he is signing, or what the will contained, to have gone on and stated that Mr. Kaulback then left the room, and I did read the will clause by clause to Mr. Murdock, and he assented to every clause, and I now say so

Mr. Kaulback had conversation with me previous to execution of the Will, immediately previous. Mr. Murdock was present. I can't answer whether anyone else was present. I recollect Mr. George Ross coming to Mr. Murdock's house previous to the execution of the Will. I can't answer whether Mr. Ross brought the Will with him, and whether it was in his hand writing. Mr. Ross did not bring the Will in and lay it down on the table, so that I did not touch it till I signed my name to it, but I read it clause by clause. I was there previous to Mr. Ross. Mr. Kaulback was not in the room after Mr. Ross came until after the execution. I'm certain I read the Will clause by clause.

Q. Did you read the Will aloud in the presence of Mr. George Ross previous to execution. A. I have already said that I cannot state whether Mr. Ross was present or not, but I'm quite certain that I read the Will, clause by clause, and would make the same assertion were it contradicted twenty or a hundred times. Mr. Ross executed it and then left the house. How long he was in the house before he entered the room, I don't know. After Mr. Ross entered the room where Mr. Murdock and I were he remained continuously until after the execution of the Will. I swear that Mr. Murdock spoke while I and Mr. Ross were in the room. It is an impossibility to state every word he said. I am not prepared to state on oath what he said. He certainly gave his assent verbally. I will not swear that he used the words, "this is my last Will and Testament." I did not see Mr. Murdock drink whisky and water while I was in the room. I won't swear that he didn't, but I swear I didn't see him do it, and didn't know of his doing it. I saw him drink some time during the evening. He finished the execution of the Will about 7 or 8 in the evening. I can't say how shortly after that he drank. If I saw a man intoxicated, couldn't attend to his business and speak clearly, and couldn't walk straight, I should say he was under the influence of liquor. I never saw Mr. Murdock in that condition. At the time I saw Mr. Murdock after the fire, he was alone, (this was at Mr. Gaetzes, about 10 or 11 a. m.) I don't know what time he went home. I saw him join the group and go in the house, but don't know when he left. I didn't see Mrs. Peck with him as far as I recollect. She was not with him—leading him. He was not blind at this time. He had not complained of it. I heard him when he was first complaining, but it was not then. I can't say whether or not he had been drinking that morning before ten o'clock. He certainly did not see him exhibit himself that morning before 10 o'clock under the influence of liquor. I've never heard it. It was about 10 or 11 o'clock when I heard Mr. Murdock offer Mr. Kaulback the use of his house. I certainly did not think he was under the influence of liquor then, his judgment was perfectly clear and he knew what he was doing.

Q. According to your definition, was he under the influence of liquor? (Objected to as a trap question. Judge decides it is a proper question.) A. He was not, according to my definition. When he offered Mr. Kaulback the use of his house, William Gaetz was present. I believe Miss Gaetz was present, Mr. McKettee, and, I believe, there were two or three others. The words,

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as near as I can remember: He (Mr. Murdock) came up to Mr. Kaulback, who was sitting on the step outside, shook hands and spoke to him as his dear friend, and of his kindness to him, and that his house had been always his home. I believe the very words he said were: "My dear friend. I deeply sympathize with you." He said, "Your house has been my house, and now you are welcome to my shanty, and to stay there as long as you please." I know that he was urging him, but cannot give any more words. That gives a description of what passed, as far as I recollect. In substance, I swear he made use of those expressions. Mr. Murdock showed some feeling about Mr. Beamish: seemed annoyed at the visit of Mr. Beamish; said they had come into his affairs. I do not know the name of the gentleman who was with him. There was some one with him; that is all I know. If you give me the name of the person, I might be able to recollect it.

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Q. Was the name Edmund J. Tobin? A. I do not recognize the name; I had not heard the name at that time.

Q. How could you say that you might recognize the name if you had not heard it at the time? A. I understood Mr. Weatherbe to ask whether he was a stranger to me or not; and I do not know the person. I think I saw Mr. Beamish passing once at the time of the visit referred to by Mr. Murdock. As near as I can recollect, Mr. Murdock complained that they had come to look into his affairs. I knew that Mr. Beamish had been here just previous. I do not remember that he mentioned Mr. Beamish's name. Mr. Charles Beamish was the person to whom Mr. Murdock referred. He (Mr. Murdock) did not describe Mr. Beamish particularly, but described generally the persons that had been there from Halifax to look into his affairs. Mr. Murdock spoke in a very irritable tone of voice, and said it was a hard thing for him that his friends cared more about his money than they did about him. He spoke of the Kaulbacks particularly at the time; that they had been very kind to him, and it was only natural that he should look after them. I before stated that he contrasted (I believe I used the word contrasted) the unkindness of his friends, the Beamishes, with the kindness of his friends, the Kaulbacks; and that it was only natural that he should look after them, or words to that effect. I gave that statement before, in effect, on my direct examination. I am under the impression that I made use of the words that "it was only natural," &c., in my direct examination. If not, I intended doing so. I will not undertake to say positively whether I did or not make use of those words. I may have seen Mr. Murdock a few days after execution of Will; cannot say how long, exactly. He was then as well as usual, as far as I can remember. At the time of execution of Will he was well; in as good a state of health as usual. He was not in a miserable state of health. He was in a good state of health. It may have been about three months after the execution of the Will that his sight began to fail. He complained to me about it. His sight was not bad when he made the Will, as far as I can recollect. When I saw him after the execution of the Will, he was as well in mind and body as at the time of the execution. I was speaking as to what he complained of to me. That letter, dated 30th August, 1875, marked "G. T. S." is in Mr. Murdoch's hand-writing and his signature, and properly described his condition, as far as he was concerned. When Mr. Ross was present he did not, to my knowledge, describe his sight as in that letter. I am not going to swear to a single word Mr. Murdock uttered at the time of the execution. (Letter read and filed.)

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Q. On the 27th of August, was Mr. Murdock's bodily health much impaired? A. I found it as it usually was. He was not a strong hearty man of course. At the time of the making of the will, his bodily health was not more impaired than usual. He was not a strong man.

Q. Was his bodily strength much impaired on the 27th of August? A. Not more so than usual.

Q. Was his bodily strength usually impaired? A. He was not a strong, hearty man.

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Q. I didn't ask you that, I want to know if his bodily strength was usually impaired? A. I don't know what else to say. He could read his own name on the 27th of August. I saw him write it and I presume he could read it. According to his story in the letter, his sight must have failed about that time (date of letter.) I suppose he thought his letter correctly described his condition. (Objected to as reasoning with witness.) I would not swear that I was in the house of Murdock's, in which he died, half a dozen times at all. (Mr. Weatherbe reads the four affidavits filed this day, herein, and moves that the further cross-examination of this witness be continued.)

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Judge refuses his continuance and directs Mr. Weatherbe to proceed at once and finish his cross-examination.

(Mr. Weatherbe tenders the four affidavits above named, and the same are read and Mr. Weatherbe now protests against the illegal interference of Mr. Owen and the application persisted in by Mr. Owen to the Judge to obtain an explanation from the witness, without noting the questions put and answers received from the witness, which took place in open court before the Judge, and which are sworn and supported by the four affidavits read, and in consequence of the illegal interference, refuses to be a party to any further examination of the witness, and withdraws from the examination, unless the facts are noted, happening in presence of the Judge, previous to any explanation to be obtained, and further protests that the witness never asked the Judge to explain until the suggestions had been made to him as are sworn and set out by affidavit; and that the answers of the witness are clear and full, and no explanation should be allowed to destroy the evidence. 3700

Mr. Owen states that he did not suggest any answer to the last question by the witness. That the witness stated on his direct examination that for the last five or six months of Mr. Murdock's life he saw him once or twice a week on an average, and that previously to Mr. Kaulback's fire he was most frequently in the habit of seeing Mr. Murdock at Mr. Kaulback's house. Seldom saw him anywhere else, but occasionally saw him at his own house previously to that date (meaning the date of said fire, which happened about the 1st of August, 1875), and consequently feeling convinced that witness misunderstood the nature of the question put by Mr. Weatherbe, and was laboring under the impression that he had reference to what took place before the fire, or to the number of his visits previously thereto and not thereafter, said to Mr. Weatherbe, will you kindly state up to what date you have reference, and Mr. Weatherbe not complying with said request renewed the application to the Judge, without intimating or suggesting to the witness in any way either directly or indirectly as to what date I had reference, after which witness explained that he had reference to his visits to Mr. Murdock's house before the fire and not after, and wished to give said explanation. And further states that previously to Mr. Weatherbe noting the objections made by him, withdrew my request to the Judge to allow the witness to give the explanation referred to, but asked the Judge to do just what he deemed right in the premises in order that justice might be done to said witness and all parties. (The Judge, at the request of witness, allows him to come in and explain.) 3710 3720

Mr. Weatherbe cites 1st Greenleaf, sec. 467.

Affidavits not received as evidence but filed and read.

In making the last answer I had reference only to the time during which Mr. Murdock resided alone in the house. I have already stated on oath that subsequent to Mr. Kaulback's residence in that house, I visited it once or twice a week, on an average, and to that statement I adhere. 3730

Q. Did you say on oath, in answer to my question, that you had finished your explanation, or words to that effect? A. I did.

Mr. Weatherbe states that he declines on the grounds already stated, and contained in his affidavit, to pursue the cross-examination. That the interference under pretence of getting explanations, should in fairness be deferred until the cross-examination is ended.

WILLIAM ELLIS.

Sworn to, at Lunenburg, in the County of Lunenburg, the 16th day of August, A. D., 1876.
Before me,
GEORGE T. SOLOMON, *Judge of Probate.* 3740

COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof in solemn form of law of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister-at-Law, deceased.

The examination of George Ross, of New Ross, in the County aforesaid, Esquire, taken before me, George T. Solomon, Judge of Probate of said County, this twelfth day of August, A. D. 1876, who, being duly sworn, deposeth and saith :

I reside at New Ross. I am a Justice of the Peace and have been for the last 25 or 30 years and acting in that capacity during that time. I was acquainted with the late Beamish Murdock deceased. I first formed his acquaintance the latter end of 1873, or beginning of 1874. I first met him at the house of Senator Kaulback. I saw him frequently off and on in 1874 and 1875. I most frequently met him at Senator Kaulback's. Mr. Murdock appeared to be on terms of friendship with Mr. Kaulback and his family on the different occasions I met him. Mr. Murdock always spoke of Mr. Kaulback as his friend, the Senator, of Mrs. Kaulback as his particular friend, and was friendly with the children, played with them, and was always willing to teach them. Such was the case from the time I first saw him until the time I last saw him. The last time I saw him he had just got out of a sick bed. That was in the last of December, 1875. I was in Lunenburg in June, 1875, (about the first week). Rev. Mr. Norwood accompanied me on that occasion. I met Mr. Murdock then at Senator Kaulback's house. That is the house that has since been burned. I was in Lunenburg on that occasion about three days. I saw Mr. Murdock each day at Senator Kaulback's. He used to come from his own to Mr. Kaulback's house. I saw him go out of Mr. Kaulback's house with Mr. Norwood and Mr. Kaulback. I think that Mr. Murdock dined with us at Mr. Kaulback's one of those days. I had not a great deal of conversation with him on those occasions. Just common topics of the day. His chief conversation was with Mr. Norwood in my presence.

Q. From the conversations referred to, and your knowledge of him at that time, what was the state of his mind, or how did you find him mentally during your visit in June.

The Judge reserves his opinion upon this question.

Mr. Weatherbe objects that evidence of opinion is not admissable, that we want facts.

Judge admits the question.

A. Well, I found his mental capacity very good.

Q. How was he physically. A. He was not very strong, though he was able to walk out. He walked out with Mr. Norwood and I think Mr. Kaulback.

After this time in Lunenburg, I next saw Mr. Murdock at my place at New Ross. He came to my house on the 18th of that same June. Was there the 19th and 20th, and went away the afternoon of 21st. Senator Kaulback, Mrs. Kaulback, some of their children, and Mr. Edwin Kaulback, accompanied him to New Ross on that occasion. I saw him all the time he was there. There was a wedding at my house. It is a mile, or perhaps a few rods less, from my house to the Church. I was in conversation with Mr. Murdock at my house, but there were others more in conversation with him than I in my hearing and presence. Rev. Mr. Moore, Rev. Mr. Ellis, and Rev. Mr. Norwood, and Doctor Webster (from Kentville) were there. Dr. Webster was not there the whole time—he came the next day. I remember some remarks made by Mr. Murdock on that occasion. He held arguments with those gentlemen there.

Q. What did he display in those arguments.

Mr. Weatherbe objects that other witnesses than subscribing witnesses to this Will, can speak only as to facts, and cannot give opinions, and on the ground of remoteness of time, and

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also on the ground that the Judge has already reserved his opinion on this question. (I Greenleaf, sec. 440, page 564,) and on the ground that the witness has stated no fact upon which the Judge can form any opinion.

A. He displayed sense; by carrying out his arguments with the gentleman with whom he was talking. He was talking to Mr. Norwood, Mr. Ellis and Mr. Moore. The two Mr. Kaulback's were there too. The subject was Theology. Mr. Norwood and Mr. Ellis were opposed to Mr. Murdock in the argument. Mr. Moore didn't say much. Mr. Murdock had as good a part of the argument as they had, every bit.

Q. Did Mr. Murdock make a speech at this time, that is on the occasion of the wedding? Objected to as too remote.) A. He did.

Q. How did he conduct himself in relation thereto. (Objected to as too remote and only matter of opinion.) A. He made a neat little speech and drank to the health of the bride. He proposed the health of the bride. He did not walk to Church. (Mr. Weatherbe objected to the question on the ground that witness should have been asked whether he went to Church and not whether he walked.) The day after the wedding he walked from my house to the lake, went up over the lake in a boat, and then walked to the Church. He only went to Church once on Sunday. The next time I saw Mr. Murdock after his visit to New Ross, was in his own house, now occupied by Mr. Kaulback. This was about the 26th or 27th of October. Mr. Norwood came to Lunenburg at the same time in his own waggon. Mr. Norwood and I went to Mr. Murdock's house together and found Mr. Murdock there. The Kaulbacks were living there then. I saw Mr. Murdock both in his parlor and in his study. I dined there the next day. When we put up our horses we went to Mr. Murdock's in the evening, and dined there the next day as I have stated. On the day on which we dined there Mr. Norwood and I went to the house in the forenoon. Murdock was home and we found him there. He dined with us. I met Mr. Murdock in the parlor and in the study also. I had conversation with him on the day on which I dined with him and Mr. Norwood also conversed with him that day in my presence and hearing. Mr. Kaulback was there. Two gentlemen came there, one was Mr. Beamish and the other, I think, Mr. Tobin, from Halifax. Some one said here comes Mr. Beamish, and Mr. Murdock said he did not want to see Mr. Beamish, that he objected to seeing him, that he (Mr. Beamish) was coming there for his own interest. Mr. Kaulback then said he (Mr. Murdock) had better see Mr. Beamish. Mr. Murdock then went out into the study. I went out and was introduced to those two gentlemen, and went out as they were conversing on business. Mr. Norwood and I then took a walk down the hill. After the walk we returned to Mr. Murdock's to dinner. After dinner we took a walk in the garden and Mr. Murdock was showing us what he did there. We remained in the garden with Mr. Murdock about one-half or three-quarters of an hour. We were talking about the garden and what had been done there, and what his plans were about gardening. After that I went down town to attend to my own business. I went into the house and was in the study before I went down town. I remained in the study no time at all, went right in and came right out again. Mr. Murdock's dress on that, as well as upon all other occasions I saw him was clean and comfortable, and very suitable for a man of his years. His hands and face was clean and nice of course, as any gentleman ought to have been.

During the time of my acquaintance and interviews with Mr. Murdock, I never knew him to be under the influence of or the worse for liquor.

Q. From your conversations and knowledge of Mr. Murdock in what state of mind was he during your visit the last part of October, 1875. (Objected on the ground of calling for an opinion, also no sufficient facts to ground opinion.) (Judge reserves his opinion.) A. Sane, clear mind. I don't recollect of his referring to Mr. Kaulback at this time. He spoke of the children with kindness. At that time he gave Mr. Norwood some books, and spoke about the books.

Q. Was he apparently as well at that time in October as when you saw him at New Ross and on other occasions? (Objected to as leading.) A. He was. The next time I saw Mr. Murdock after that was the latter end of December, and that was the time I had reference to his being poorly, and was the last time I saw him. (Objected to.) I saw no change in his mind then. He was physically weaker. I always heard Mr. Murdock speak in terms of friendship of Mr. Kaulback and his family. He spoke of Mr. Kaulback as his friend the Senator, friendly of Mrs. Kaulback, and was very fond of the children.

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Q. How did you find Mr. Murdock in his views when in conversation. (Objected to on same grounds as before where Judge reserved question). A. I always found him the same in his views, clear in his views. Clear on the subject he was talking about.

Q. Was he decided in his views or easily persuaded? (Mr. Weatherbe objects to the question, not only on the ground that the witness had no right to speak of his opinion, but must confine himself to facts, but also on the ground that the very opinion which Counsel wishes to extract is put in the mouth of the witness. The Judge rules the question out.)

Q. When conversing with Mr. Murdock how did you find him in expressing or giving expression to his views? A. He expressed his views very clear.

Q. Was he firm or easily led? (Mr. Weatherbe objects that question calls for opinion and suggests the answer desired to be obtained in the very words. Judge admits the question subject to objection.) A. He was firm. On the different occasions I saw Mr. Murdock I never knew Mr. Kaulback in any way to endeavor to influence Mr. Murdock. I never knew him to unduly influence Mr. Murdock.

Cross-examined by Mr. Weatherbe.

Q. When asked to describe the views of Mr. Murdock before the word firm was suggested to you, you described his views as "clear." Why did you not add the word firm? A. I thought the word clear would answer the purpose. I could not tell how many hours I spent with Mr. Murdock after the time he was at New Ross. When we came to Lunenburg we put up the horse at a public stable and spent the evening at Mr. Murdock's. I cannot say how many hours, that evening. I was in and out the house. I saw Mr. Murdock that evening at his own house. I think he was well that evening. I will swear he was not in bed that evening. Mr. Murdock was in the room in his house all that evening while I was there, and every part of the evening, and he was not in one room when I was in a different room. I went there about 8 o'clock in the evening. Cannot tell exactly, and came away, I think about 11 or 12. I was in Mr. Murdock's company about three or four hours that evening. I went up there next morning about 10 o'clock, and saw Mr. Murdock there, and Mr. Murdock was in my presence about half the time I was there. I was at the house about four hours on that occasion, including the time we were in the garden. I saw Mr. Murdock a few minutes at sundown that evening. In December I went to the house about 8 or 9 o'clock, 8 o'clock I think, in the evening. I saw Mr. Murdock then; he was feeble. He was sitting up in bed that evening. I remained in his room where he was sitting on the side of his bed, about half an hour that evening. The Doctor was not in. I went up there next morning about 12 o'clock. He was sitting on the side of his bed, dressed. I remained there about an hour and a half. I saw him next day again, he was sitting in his chair, and walked across the room. I was in his company at that time between half an hour and an hour. That was all I saw of Mr. Murdock after he left New Ross in June. I have not a good memory to recollect conversations. I think I have stated all the conversation with him that I recollect. There may be something I did not think of. I cannot say that either on that evening or the next day in October, he described Senator Kaulback as his friend. The last time I saw him in December he spoke of Senator Kaulback as his friend. The latter was not in the room at the time. I cannot say exactly the words he said when he described Senator Kaulback as his friend. He asked me, "Where is my friend, Senator Kaulback?" As far as I can recollect, these are the very words. I answered him that he was down in town, I believed, or down in his office, or something to that effect. He made no reply. I was alone in his room when he asked me that. That was the second day I was there in December. I think that was shortly after I came in the room. He did not mention the name of Senator Kaulback on any other occasion in December. He had no other conversation with me about Senator Kaulback on that occasion in December. I met Mr. Kaulback the morning Mr. Murdock asked me where he was, between Sheriff Kaulback's where I was staying, and Senator Kaulback's house. In October visit to Lunenburg most of the time I was in Mr. Murdock's presence. Senator Kaulback was present also as well as others. I was present when Mr. Murdock wanted to go to Mahoue Bay. He said he wished to go. Said he wanted to go. I cannot say how anxious the man was to go. He was to go with Mr. Norwood. I left them talking together. That is all I heard him say about going, pretty much. After a while I went out of the room. He said over and over again he wanted to go to

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the Bay. He said two or three times he wanted to go. He said it three times—not more—to my knowledge. He said it in a mild tone of voice. As nearly as I can recollect, the words he used were that he wished to go to Mahone Bay. Mr. Norwood expressed a willingness to take him. They were to start in the afternoon some time. This conversation was at dinner time, either just before or after dinner. It was after we came in from the stroll. Mr. Murdock first commenced the conversation on the subject of going, I think. Mr. Murdock said he wanted to go, and Mr. Norwood said he would be happy to take him. I do not know that Mr. Murdock knew Mr. Norwood's route lay in that direction. All this conversation was after the stroll. Mr. Norwood and I went into the house together, and left for the stroll together. I am not sure Mr. Norwood and I were together all the time in the room. I knew we went into the house together. I was in the sitting-room and in the study that morning before we went for the stroll. I think Mr. Norwood (while I was talking to Mrs. Kaulback) went into another room where Mr. Murdock was. Upon Mr. Beamish being announced, I was introduced, and then left for the stroll. I did not know Mr. Norwood was introduced. We were sitting in the parlor (Mr. Norwood and Mr. Kaulback, Mrs. Kaulback and myself and Mr. Murdock) when Mr. Beamish was coming. Somebody said, "There comes Mr. Beamish. Mr. Murdock made some demur, that he did not want to see Mr. Beamish; that he was coming after his own interests, and made an objection to going into the other room. Mr. Beamish had been shown into the other room. Mr. Kaulback said he had better go and see him; that it would be discourteous. The old gentleman then went out to see him. I was there all the time, and that was all that passed, I think, before Mr. Murdock went out to see him. When Mr. Beamish was coming, I think the exact words used were, "There comes Mr. Beamish." Mr. Murdock's words were, "I do not want to see him; he is coming for or after his own interests." I think the words were, "I don't want to see him;" and not "I won't go to see him." I swear that Mr. Murdock at that time said he was "coming for or after his own interests." I cannot be mistaken about that. I did not hear any body else urge him to go and see Mr. Beamish. He said it in presence of all those persons present, including Mr. Norwood. I never saw Mr. Murdock out of Lunenburg, except on his visit to New Ross. I got acquainted with him at Senator Kaulback's house. They introduced me. October was the first time I was inside Murdock's house; then the Kaulbacks were living there. I never saw Mr. Murdock in anybody else's house in Lunenburg except Senator Kaulback's and his own. I came to Lunenburg about three times a year. I saw Mr. Murdock three times before June, 1874. I could not say four times. I can swear that I saw Mr. Murdock more than three hours before June, 1874. I saw Mr. Murdock two days at a time previous to June, 1874. I am not prepared to swear to the number of hours I saw Mr. Murdock before June, 1874. While at New Ross, Mr. Murdock acknowledged his signature to a paper, which he said was his will. He asked Mr. Smith and me to sign it as witnesses, and we did so. (Objected, not being evidence, and no notice to produce having been duly given.) I introduced him to Mr. Smith, and immediately after he asked Mr. Smith to come in and witness this document, that is, the document he said was his will. Immediately after the introduction, Mr. Vernon Smith signed the paper as a witness. This was the evening before he made the speech. He did not mention where he had made the will, nor did he mention a lady at New Ross whom he had made a legatee. He told me nothing about the contents of the will. I could not tell what he did with it; think he put it in his pocket. Think he had an envelope to put it in. I think Mr. Smith remained in the room afterwards. He did not, to my knowledge, sign any other paper while at New Ross, which he said was another will or codicil. He did not tell me that either in a will or codicil, made at New Ross, he had made a young lady there a legatee. I did not hear him in June say anything about making a will. (Objected, not being evidence, and no notice to produce having been duly given.) He did not, to my knowledge, make any poetry at New Ross. I know nothing about his poetry. I saw some poetry about his visit to New Ross; don't know who wrote it; my son had it. He did not act rather childish and silly at any time at New Ross. I never said so, and could not say so. Mr. Murdock never told me that Mr. Kaulback had entered up a judgment against him in violation of his word. When I spoke of seeing Mr. Murdock two days, I meant two different times. I mostly staid at Senator Kaulback's or the Sheriff's on former visits to Lunenburg, and either at the Senator's or his father's, the Sheriff.

Re-examined by Mr. Owen.

I have been in the habit of making wills and attending to the execution of them. (Ob-

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jected.) Mr. Murdock acknowledged his signature to the Will in my presence, and in presence of Mr. Vernon Smith, who were present at the same time, and said it was his Will, and Mr. Smith 3950 and I witnessed the same in Mr. Murdock's presence, and in the presence of each other.

Q. You stated in your cross-examination that Mr. Murdock wanted to go to Mahone Bay with Mr. Norwood, at the time Mr. Charles Beamish visited Lunenburg in the latter part of October, 1875, which was after Mr. Murdock had on that occasion expressed dissatisfaction with Mr. Beamish, did Mr. Murdock state why he wished to go to Mahone Bay, if so, what reason did he give. A. I didn't hear him give any particular reasons for going.

Sworn to at Lunenburg, in the County of Lunenburg, }
the 12th day of August, 1876, before me, }
GEO. T. SOLOMON, Judge of Probate.

GEORGE ROSS.

COURT OF WILLS AND PROBATE.

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LUNENBURG, SS.

In the matter of the proof, in solemn form, of the alleged last Will and Testament, of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister-at-Law, deceased.

The examination of William A. Gaetz, of Lunenburg, in the County aforesaid, merchant, taken before me, George T. Solomon, Judge of Probate of said County, this thirtieth day of August, A. D., 1876, who, being duly sworn, deposeseth and saith:

I am a resident of the Town of Lunenburg. I am about leaving the Province. My business has been that of a merchant in the West India and fishing business.

I was acquainted with the late Beamish Murdock. I made his acquaintance the first day he came to Lunenburg. I met him frequently from that time up to that of his decease. I have on those occasions been several times in conversation with him. He very often came down to my store. We always talked about business affairs when he went in the shop. 3970

(Mr. McDonald objects to evidence of general conversations between witness and deceased.)

He was often asking as to how the business was transacted. He'd want to know what returns the vessels had brought back, and what the prospects. He'd talk about the lumber business, and what he thought about that.

(Mr. McDonald objects to all conversation of Mr. Murdock.)

He appeared to have very good ideas of different kinds of business, which I approved of. I used to like to hear him talk about those sort of things, and get information. I remember the time of Mr. Kaulback's fire. It took place the 29th July, 1875. After the fire, Mr. Kaulback and his wife came to our house; while the fire was going on, I think it was. Mr. Murdock came to our house, while the fire was going on an hour or so. He was there a little while, and went away, and came back about 8 o'clock in the morning. He came to see Mr. Kaulback's family. 3980

(Mr. McDonald objects to conversations of Mr. Murdoch, as being irrelevant to the issue.)

I met Mr. Murdoch on the stoop at 8 o'clock, and invited him in the house. He came in with me, and prevailed upon Mr. Kaulback's family to come right up to the house at once. He said he wanted to see Mr. Kaulback's family, that he wanted to prevail upon them to come right up to his house. The Kaulbacks did not go then. It was just about breakfast time and they were just sitting down to breakfast.

(Mr. McDonald objects to all conversation of Mr. Murdock's.)

Mr. Murdock was at the house several times after that. He dined there on Sunday. Mr. and Mrs. Kaulback also dined there. 3990

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He asked them again on Sunday morning to come up to his house and make it their home; wanted them to come the following (Monday) morning. They did not go on Monday morning. I didn't hear Mr. Kaulback make any reply. He asked them again, and insisted upon them going up to make it their home. They then went up there a few days after that. A few days after Mrs. Kaulback had been up there, he (Mr. Murdock) came down and took tea with us. He took several meals with us while the Kaulbacks were at our house. He breakfasted with us. He only came there on account of Mr. Kaulback being there. He came there to see Mr. Kaulback; he had never been at the house before. I saw Mr. Murdock the night before he died, at Mr. Kaulback's 4000 house.

Question.—From about the time you first met Mr. Murdock, as stated by you, up to the time you saw him, the day before he died, how did he express himself to your knowledge, with respect to the Kaulback's, and on what terms was he with them?

Mr. McDonald objects; that the question is too general, and would necessarily embrace an answer illegal and irregular.

Judge rules question out.

Question.—Have you heard Mr. Murdock refer to Mr. Kaulback and his family, if so, in what terms?

Answer.—He always spoke of them as being very kind to him. He said he did not know 4010 what he would do if it was not for them. I never saw Mr. Murdock under the influence of liquor. I've only seen him take it twice, all the time I knew him, and that in very small quantities,—about a tablespoon at a time. He'd fill the glass up with water. He'd sip at it a whole hour; he'd smoke and talk. Such was the case the time he was at our house. I know Mrs. Peck.

Mr. McDonald objects that the question as to Mrs. Peck's habits is irregular, inasmuch as there was no ground laid for contradiction.

Judge rules it out.

I had conversation with Mr. Murdock the night before his death. It was the early part of the evening, about 9 o'clock. He was then in bed, and said he would not have gone so soon if he had known I was coming. He asked me to sit on the foot of his bed, and have a talk with him. 4020 He asked me why I hadn't come oftener to see him before that. He said he hadn't felt very well. We were talking of things in general,—everything we could think of, to keep up a conversation. He commenced about Mr. Zwicker's business and Mr. Eisenhaur's business, and compared them together. He wondered how Mr. Zwicker became worth a dollar, the way he transacted business, towards Mr. Eisenhaur,—I mean in comparison with Mr. Eisenhaur. We kept on talking that way till half-past eleven, and then I left.

(All this evidence objected to as before.)

Question.—From your knowledge of Mr. Murdock and the conversations referred to, what was the state of his mind when you conversed with him on the evening before he died?

Mr. McDonald objects on the ground of irrelevancy.

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Judge admits question subject to objection.

Answer.—I never thought of anything else but that he was of sound mind. His memory was very good, he seemed to trace things up very far back.

Question.—What, to your knowledge, was the state of his mind from the time you first made his acquaintance to the time you last saw— (Mr. McDonald objects on same ground as above.)

Answer.—I thought nothing else but that he was of sound mind from the time I first met him to the time I last saw him. I thought he had a very firm mind of his own.

Cross-examined by Mr. McDonald.

I first knew Mr. Murdock the day he first came here, about four or five years since. I knew him best the last part of his residence here. The conversations I referred to as having taken place 4040 with Mr. Murdock about the West India business and that sort of thing, was in the early part of his residence here, when he lived down by the shore. During the last two years I met him on the street, and at Mr. Kaulback's house, and these were the only times during this time I had an opportunity of conversing with him. That is exclusive of the time he was at our house after the fire. After Mr. and Mrs. Kaulback went to live at Murdock's, Murdock was only at our house once. I never met Murdock socially at any house except at Kaulback's. During the last two years of Mr. Murdock's life I met Murdock subsequently at Mr. Kaulback's house. I spent the evening with

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him there about two or three times, but I saw him coming in and out frequently. I never spent any evening with Mr. Kaulback after he moved into Murdock's house. I never spent any evening with Murdock after Kaulbacks moved there, except the evening before he died. I had conversations with Murdock on the street and in the store after the Kaulbacks moved there. I met him in the store several times. He generally dropped in when he went to the Post Office. I dare say I met him half a dozen times on the street after the Kaulbacks moved there, and our conversation was generally on the news, and bid the time of day. I had a conversation with Murdock two or three times in the store, and on the street, between time of fire and November. I always thought Mr. Murdock a weakly, frail old man; he was frail about the legs, walked so, weak in the knees. 4050

I never saw Mr. Murdock the worse of liquor. I mean that I never could tell by his speech or walk that he had been drinking to excess. Sometimes he used to walk with a stick. His walk at all times suggested weakness and hesitancy. He walked as if his shoes were too large, they seemed to me so. I knew the house he lived in very well. I had been in it before he bought it several times. I was never through it. It is an ordinary cottage, one story and an attic. There are two front rooms. It is a small house, can't tell what number of rooms in it. 4060

I thought Mr. Murdock was 80 years of age or more, by appearance. His talk and conversations seemed to be not more than half that, from that I would not have taken him to be more than forty. I went up on that evening before his death to bring my sister home. I found her there. Mr. Kaulback was at Ottawa, and Mrs. Kaulback was away. My sister and Mr. Kaulback's daughter, and little boy were there in the house. As soon as Mr. Murdock heard my voice, he called me to come into his bed-room. I didn't notice any change in him. He appeared to be in his general health, but he told me that he wasn't very well. The next thing I heard, he was dead. I was shocked to hear of his death. That night that I saw him, (Mr. Murdock,) except from what he told me, he was, in my opinion, as sound in body and in mind, as at any time since I knew him. He may not have been in body, but he was in mind. 4070

Question.—Do you undertake to say that you are a more competent judge of a man's mental than of his bodily condition.

Answer.—No, I do not think I am.

I only judge by the doctors being there, that he was unwell. I could not have told it otherwise.

I don't know that my opinion as to his mental, would be worth more than my opinion as to his bodily health.

Objected as matter of opinion.

The last time I met Mr. Murdock in Mr. Kaulback's house, was six months before the fire. Mrs. Kaulback and Miss Smymmmer were there. I staid till about ten o'clock. He neither smoked nor drank that evening. I never saw him drink at Kaulback's house at all. I saw Mr. Murdock drinking at King's hotel, and our own house one Sunday afternoon we were sitting together. When I saw him drinking at King's hotel was when he first came. Mr. Kaulback moved up to Mr. Murdock's house about eight or ten days after the fire, and during that time Mr. Murdock was an habitual visitor at our house. He came every day. 4080

Mrs. Kaulback was six or seven days at our house before she made any preparation for moving. The reason for that was because the house (Mr. Murdock's) was so small, but Mr. Murdock persuaded them to go. In my direct examination, I think I mentioned every time that I heard Murdock speak to Mr. and Mrs. Kaulback about moving to his house, they both objected to going, because the house was too small. 4090

Question.—What did Mr. Murdock say in answer to the objection that the house was too small?

Answer.—He said he could make it convenient for them. I think Mr. Kaulback was present when he said so. He did not say how he proposed to make it convenient.

Mr. Murdock did not dine on any other day (than the day mentioned), with the Kaulback's while they were at our house. Mr. Murdock's words were: "I want you to go and you must go and make it your home." He didn't say how long. I judged he meant for good.

(Mr. McDonald objects to the last portion of the answer, as it is mere matter of opinion and not statement of fact.) 4100

Re-examined by Mr. Owen:—

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Mr.

(Mr. McDonald objects to any re-examination, excepting on new matter, of which he contends there is none.)

Question.—You stated on your cross-examination that on the Kaulbacks objecting to going to Mr. Murdock's house to make it their home, in consequence of its being too small, that Mr. Murdock replied he would make it convenient for them. Did he further state how or in what way he would do so. (Judge rules question out.)

WM. O. GAETZ.

Sworn to at Lunenburg, in the County of Lunenburg, the 30th day of August, 1876, before 4110
me,

GEORGE T. SOLOMON,
Judge of Probate.

COURT OF WILLS AND PROBATE.

CO. LUNENBURG, SS.

In the matter of the proof in solemn form of Law of the alleged last will and testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister-at-Law, deceased.

The examination of H. A. N. Kaulback, of Lunenburg, in the county aforesaid, Barrister, taken before me, George T. Solomon, Judge of Probate, of said county, this sixteenth day of 4120
August, 1876, who, being duly sworn, deposeth and saith:

I reside in Lunenburg. I am a Senator of the Dominion of Canada, a member of the Bar and Queen's Counsel. My family is residing here in the place in which the late Beamish Murdock died. My family consists of my wife, Emma Sophy, son Charles, daughters Edna and Mary, son Rupert. I have been acquainted with the late Beamish Murdock for 23 or 24 years; but not very intimately until he came to reside in Lunenburg in the summer of 1872. I was very intimately acquainted with him from within a fortnight or three weeks of his arrival here in 1872, up to the time of his decease,—never a day being absent from my family, unless through sickness, absent, or weather unpropitious, or some other particular engagement. It was always remarked if he was absent from our house, and he was enquired after. Some time in summer of 1872,—some few days 4130
after he arrived,—he purchased a residence from me in the town of Lunenburg. His residence was in Lunenburg from that time, up to the time I left for Ottawa (the end of January or beginning of February, 1874); or it may have been in March. The session was later than usual that year. Mrs. Kaulback was then absent until some time in July. During my absence I had reason to believe that he had gone to Halifax. On my return home, in 1874, I found Mr. Murdock had gone to Halifax. I had not been here long before Mr. Murdock came down from Halifax to Lunenburg. He stated in effect his reasons for leaving Halifax.

Mr. Weatherbe objects that conversation is long anterior to the question in dispute, and too remote; 2nd, that this conversation is in 1874, and not admissible at all, because conversations are only admissible to show insanity. 4140

He stated in general terms that the atmosphere or surroundings of Beamish's house was not congenial to him. He felt pained because he had left Lunenburg, and consequently I did not enquire into particulars at that time, but he told me subsequently.

(Mr. Weatherbe objects that this conversation raises a new issue.)

Mr. Murdock resided in Lunenburg from that time (fall of 1874) to the time of his decease, about

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the 10th of February, 1876. I was not home when he died. I got a telegram at Ottawa, saying he was dead. I was attending Parliament. On my return to Lunenburg, he desired to take up his residence at my house. He told me so. I persuaded him, that being,—(Mr. Weatherbe objects to conversation between witness and deceased at this period, on the grounds already stated, and that witness is making evidence for himself, by giving his own conversation.) Judge admits the 4150 evidence.

I remember two objections I raised: 1st, that he had been an old bachelor so long that he might not care to conform to the rules of my house. In the next place I said it was beneath my dignity to take him in as a boarder or lodger, and that parties might say that I got him there to get his property. He conferred with me what was best to be done, and asked me if I could find a suitable house for him. I mentioned to him all the houses I knew that might possibly be got, among which were three or four of my own. After some weeks delay, and after disputing with me about the price, (I think there was a dispute of a hundred dollars between us,) we divided the difference between us, and he took the property, being the house in which he died. He got it, fitted it, and got into it before the cold weather of autumn 1874. It wanted some repairs before it was 4160 fit to live in. There was a large garden (larger than ordinary in the town) attached to the premises. He lived in that house up to time of his decease. I lost my house by fire on the morning of the 29th July, 1875, (two o'clock in the morning); the whole of my buildings. From the time Mr. Murdock came to Lunenburg in 1872, up to the time I left for Ottawa in 1874, he was constantly, I may say almost daily, at my house,—he was often to breakfast, yet oftener to dinner, and was never absent from tea, unless from some particular reason; and he would generally give the reason for his absence,—that he wasn't well, or had gone somewhere else. From the time he returned from Halifax in autumn 1874, up to the time of my fire, in 1874, he was more frequently to my house to breakfast and dinner even than he had been previously. In fact, he had the run of my house; he'd go from the parlor to the kitchen, up stairs, and into the garden frequently with Mrs. Kaulback. 4170 He'd go out weeding and superintending, and pruning the plants sometimes. I think two-thirds of the time he was at my house (that is, of the time people are out of bed). He was in the habit of spending the evenings at my house. Whenever Mrs. Kaulback or I drove out, he was generally one of the party.

Question.—From the time of Mr. Murdock's coming to Lunenburg, up to the time of your last seeing him, or of his decease, on what terms was he with yourself, Mrs. Kaulback, and your children, and how did he, to your knowledge, express himself, with regard to you all.

Answer.—His friendship increased and strengthened both to myself and family, I believe from the time I first met him, up to the time of his decease. There was no break of that feeling between himself and me, except some misunderstanding with regard to a judgment that I held 4180 recorded against him in Halifax (it was recorded in 1873, I think, not positive); one or two judgments I recorded in Halifax, I think. There were two taken. That misunderstanding lasted about four hours; he expressed himself very strongly with regard to my recording these judgments in Halifax. I expressed myself equally as strong with regard to my conduct in the matter. We both agreed it was a misunderstanding, and he never alluded to it, or intimated to me after that, that I had acted in any improper way towards him. He told me he was constantly reminded of it by Charles Beamish of my dishonesty towards him, and who endeavoured to alienate him, and keep him away from him, and the only friends he had. With regard to Mrs. Kaulback, his manner, conduct, actions and expressions towards her, reminded me of that of a father to a child. The children were always fondling and crawling about him, and he expressed himself very affectionately towards my eldest 4190 son Charles. The two youngest were always fondling about him. He manifested almost as strong an attachment towards them as if they had been his own. It couldn't have been stronger if they had been his own. I can't say what he said about me to others, but I feel confident that he had a high respect and esteem for me, and that was mutual. He appeared to be anxious always to be in my company, whenever I could give my time to him. I don't know if any one could have expressed himself towards me in a more friendly and intimate way. I don't think I ever had a warmer friend than he. I think he'd do as much for me as my father would. After my dwelling was destroyed by fire, I first saw Mr. Murdock between eight o'clock and midday the same morning at Mrs. Gaetz's. That was when I and Mrs. Kaulback sought shelter.

I wouldn't pretend to give anything like the words Mr. Murdock made use of on that occasion, 4200

for the calamity was so great. I have but a confused idea of what it was, but I remember Mr. Murdock coming there, and I know he was very much overcome at seeing us in our misfortune. He had just left our house about an hour or two before the conflagration. But I know he implored us in the strongest terms possible, both in manner and expression, to come up and make our abode with him. He repeated this, continued it day by day for about a week, coming in the morning sometimes to breakfast, was then generally at every meal we took at Mrs. Gaetz's, and kept urging and repeating to the morning we did go, that we should come up. I remember on one occasion, he remarked that what was our loss, was his gain, and that now he had at length gained what he was seeking for, namely, to be in our family. He reminded me of his desiring to come and live in our house, and was glad that he now had a house of his own to give us shelter, and said if it wasn't sufficiently large, he would add to it. I left it entirely to Mrs. Kaulback what we should do. Mr. Murdock at last persuaded her to go, his entreaties were so large and great. 4210

He was so severe and earnest in his desire that we should go there, and that Mrs. Kaulback should consent. About a week after our calamity, we went there (Mrs. Kaulback and I), the children, I think, lodged at their grandfathers, and came to their meals at Mr. Murdock's, and took up their abode there. About a month after, when we got to rights, my eldest son went to college about 1st of October. Upon the suggestion of Mr. Weatherbe, I would say that they may not have got all their meals at Mr. Murdock's until such time as we got settled down. They were out among their friends. I don't remember where. Charlie stayed at Mr. Daniel Owens. I and my family resided in Mr. Murdock's house up to the time of his decease, he urging us in every way to remain, that he wouldn't be separated from us, expressing his regret that his accommodations were so small, but he would add to the house, and almost stipulated that as soon as I built, he was to come and live with us. He expressed a desire that wherever we were, we should not be severed, but that he and the family should be together. When we went to live with Mr. Murdock, he had a servant, Mrs. Peck, and Mrs. Peck's daughter was in the house. That was Mrs. Catherine Peck who gave evidence here, and her daughter was the one who gave evidence in this cause. Mrs. Peck remained there about a week or ten days after Mrs. Kaulback and I moved to Murdock's after the fire. Both she and her daughter left almost the same time by Mr. Murdock's order. After we had been in the house some three or four days, I came up to the house about mid-day, about 12 or 1 o'clock. I found Mr. Murdock cross. He said he had charged Mrs. Peck that morning with tampering with his letter, tampering with a letter he had given her to mail to Miss Crowe sometime previous; that she had tampered with it by not mailing it; and that she in reply said that she took the letter and laid it on a lawyer's desk. I asked him—"did you understand her to mean myself," he said he could get no further satisfaction from her. That is the substance of what he said. I said, Mr. Murdock, I had better go with you in the room, and see Mrs. Peck about it. He said it was no occasion, or not worth while, that nothing could justify her not mailing the letter as she was ordered. He was very cross at the time. He then says "here's another bill which I considered was paid." I gave her money to pay it. He then went to his desk, and says she must leave this house, both her and her daughter. He then sat down to his desk excited, and he wrote this note, and put it in an envelope. I presume it's the same envelope. I have nothing to identify it. 4230

I know it was addressed to Mrs. Kaulback. I saw him go across to the parlor, and said to Mrs. Kaulback: "Mrs. Peck, or Mrs. Peck and Miss Peck, must be dismissed; here's your authority. (Handing the letter to Mrs. Kaulback.) I must go out of the way until she's removed." He read this letter to me before he took it over to Mrs. Kaulback. I remember remarking to him that it was not right, imposing that duty on Mrs. Kaulback. I persisted then on Mr. Murdock's seeing Mrs. Peck with me, with regard to what she said about the letter and its having been taken to a lawyer's office. (Letter dated 12th August, 1875, and envelope above referred to put in and marked "T," "G. T. S.," filed and read.) That letter is in Mr. Murdock's hand-writing, and that is his signature. I saw him deliver it to Mrs. Kaulback. I went out in the kitchen with Mr. Murdock and saw Mrs. Peck. I couldn't say in exact words, but Mr. Murdock said in substance, "I want you now to tell me, Mrs. Peck, what you did with the letter I gave you to mail." She answered, "I don't know anything about your letter. I always mailed your letters." She was half intoxicated. He was very much exasperated, and said: "You must clear out of this at once." I don't remember anything particularly she said in reply. Afterwards, again in my presence, he again demanded of her to give some explanation with regard to that letter, and what about the lawyer's office (he in some 4250

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way referred to what he told me first about the lawyer's office, I think). She didn't stand to converse, but muttered something and went away. She heard him address her. She appeared that she didn't know what to say about it. She seemed to be perplexed. Appeared like a person that was guilty of doing a thing and didn't know how to get rid of it. I think second conversation was the morning of the following day. My son Charles was present on one of those occasions Mr. 4260
Murdock spoke to her. Mr. Murdock had partly made arrangements to go away, but decided that he'd remain now that she was to go and had to go. I came home that day about 12 or 1 o'clock. Mr. Murdock said to me to go up-stairs and see the old thing, or old woman, that she was dead drunk lying on the floor up-stairs. I didn't go.

Question.—Had you seen her in that state at any time,—I mean intoxicated?

Mr. Weatherbe objects to the question as leading.

Mr. Weatherbe objects; not being material to the issue, and on the ground that no contradiction or rebuttal should be allowed except on matters material to the issue:—1st, Greenleaf, Sec. 461 and 462, and that the matter now sought to be contradicted, consists of evidence produced by respondents' counsel on cross-examination, and this would allow him to create a new issue and a 4270
new trial to be met by us; and that we are not trying the drunkenness of Mrs. Peck.

Judge admits the evidence.

Answer.—Yes; I've seen her in that state that she couldn't move. I saw her twice helplessly drunk,—once on the day she was lying in Mr. Murdock's room, on the bed (about two o'clock in the afternoon), in the autumn of 1874 (about December; a month or six weeks after Mr. Murdock moved into the house). I saw her another time about three weeks after that,—I saw her helplessly drunk again lying on the floor in the kitchen. I don't remember seeing her helplessly drunk at any other times; but have seen her on other occasions that she could not do her ordinary work about the house from the effects of liquor. Have seen her half drunk frequently, so that she could just toddle along at different times, from the time she first went up there, to when she was 4280
discharged. I remember particularly going up to Mr. Murdock's about Christmas, 1874. A short time previously I had given him a small jug of two quarts of whiskey. Mr. Murdock had asked me if I'd give him some of that rye whiskey I had there. I remember filling the smallest jug I had ever seen, I think. Mr. Murdock in the evening, I think, went home and took it home. I accompanied him, and offered on the way to carry the jug, and took it in the house and gave it to Mrs. Peck; told her it was Mr. Murdock's. She opened it, took the cork out, filled a tumbler three-quarters full and drank it, and said it was very good. I think on another occasion, got at my house some whiskey again; I think in a small jug. I accompanied him and relieved him of it in walking; asked him if I couldn't carry it better than he could. I took it in the house; I can't remember whether I gave it to Mrs. Peck on that occasion or not; but I swear positively that I've tried to 4290
remember, and considered and thought it over, whether I took any liquor at any other time to Mr. Murdock, and I swear positively that I did not, except taking up one or two bottles of sherry or one or two bottles of champagne, on different occasions. (Shall I say any more about the liquor? I have more to say about it.) That Mrs. Peck carried liquor from my house five or six times, to my own knowledge. She came for it for Mr. Murdock. She carried it in about a two-gallon jug. I don't know of any one else carrying liquor up to Mr. Murdock; but it went up full five or six times. I remember the circumstances attending two or three of them. I remember once in morning she carried it in a large black or brown dark shawl. It amused me to see how carefully and tenderly she carried it in her arms. I saw it from my office window. She took it out of the yard gate. She mostly took it (on those occasions, I remember) away at night. I remember that Mr. Murdock - - 4300

Mr. Weatherbe objects that the witness was going on to state the complaint which turned out afterwards to be a conversation with Mrs. Peck, which was ruled out by the Judge on objection. That in answer to the objection, Mr. Owen suggested that it might have been a complaint of Mr. Murdock's, and objects, having led the witness. (The Judge admits the question, and Mr. Weatherbe requests that the question be put.)

I complained to Mr. Murdock that there was too much liquor going up to his house, that it was wrong. I think I gave him some idea of the quantity that was going up, (that was in May or June, 1875,) and he said he couldn't believe it, that he'd enquire about it, ask Mrs. Peck about it. Finally it was continued. There was very little abatement of the quantity going up, and I again brought it to his notice. I think he suggested, at any rate it was agreed between us, that I should 4310

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go up to the house and see Mrs. Peck in his presence. I went home with him that evening and the conversation was introduced either by Mr. Murdock or myself, when she came into the room about 10 o'clock at night. I don't know what she said. She said it was very weak. That she gave some away, and Mr. Murdock gave some to his friends. That is the substance of what was said. I think that must have been towards July, before the fire. I know under what condition Mrs. Peck went to Mr. Murdock's house. When Mrs. Peck had been there a few days, I interested myself in Mr. Murdock's getting comfortably located there, and to see that everything was right. I was then up one evening with him. Mrs. Peck was talking, saying what she was to get, that she was to get three dollars a month wages, and she said, "ain't I, Mr. Murdock." He affirmed it, and said yes, that was her wages. (Mr. Weatherbe objects to this class of evidence, on the grounds that it raises still further immaterial issues which it would be impossible to try here, and this, on matters concerning wages, brought out entirely by the respondents, that the respondents should be confined to the matters at issue in the petition.) 4320

Judge admits the evidence.

I further say, on another occasion, in presence of Mr. Murdock, she said, "Mr. Murdock, will you let me go to Yarmouth." He gave her permission, and gave her six dollars for two months wages, and twelve dollars towards her expenses going to Yarmouth.

Mr. Weatherbe objects on grounds taken, and no time and place for contradiction.

Judge rules the evidence out.

I was in the habit of accompanying Mr. Murdock home at night, from time to time, from my house, about half the time during the time that Mrs. Peck was living with him. I accompanied him generally when it was dark and blowing, or weather bad. 4330

Question.—Was Mrs. Peck in the habit of dressing and undressing Mr. Murdock for two months before she left his house, and did he require such attention during that time.

Answer.—I'd say that during that time I saw a great deal of Mr. Murdock. I saw him more than half the time go to bed himself, and undress himself. As to dressing himself, I can't speak from personal observation, except that I know that he was away with me at New Ross, during the two months, that he did not require and did not receive any assistance to dress whilst there (some four or five days), and at home, I remember one morning early going up to his window, rapping at his window, calling to him and opening the window and told him I was going for a bathe, when he got up, dressed himself and went with me, without any assistance, and we walked to the back harbour to have the bath, over a rough road, and where there was no road to get to the bathing place, and there he didn't require any assistance to undress or to dress after bathing. That could not have been more than three weeks before my fire, may have been only a week. 4340

Question.—Did he accompany you bathing after the fire?

Objected to as leading, after answer given, but before written.

Answer.—I can't say positively that he did, but I think so. My impression is strong that he did, but I can't remember the time nor occasion; but I know that he did go bathing, at least I've seen him return with a towel himself, after the fire. He told me he had been bathing, and his appearance would indicate it. I know of Mr. Murdock having been laid up with a broken rib, that was just before I left for Ottawa, about January or February, 1875. He was just recovering when I left. I couldn't say personally how long he was laid up with the broken rib. About ten days before I left for Ottawa he was laid up. 4350

Question.—I want to know how long he was laid up with a broken rib? He was laid up with the broken rib about a week or ten days before I left for Ottawa in January or February, 1875. He had been in a high fever one night before I left. I saw him, and I remember his telling me about it, and Mrs. Peck telling me about it in his presence, how sick he had been, that the fever affected his mind, and that his clothes hanging up—I don't know whether he said—were people or ghosts.

Question.—Have you anything further to say in connection with that?

Answer.—That conversation was on the day or day before I left. Mr. Murdock was in his bed. The fever had then abated, and he was as calm and rational as on ordinary occasions. He spoke about my going away, and was sorry I was going; that he'd miss me. That he hoped my going to Ottawa would be pleasant and profitable; said he'd write to me. I can't remember; I sat with 4360

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him an hour or so. I think that was the last time I saw him before going to Ottawa on that occasion. He did write me. He asked me to let him hear from me, and anything public of importance communicate. (This was in January or February, '75.) I remember also that he regretted very much not being able to accompany me. I came back from Ottawa in April or the early part of May. I found him very smart when I returned. The very evening I returned, he was down waiting to receive me at my house. Leaving him as I did, I remarked that I was glad to see that he was very smart, being under the impression that he had been confined to his house for two or three weeks after I left. 4370

Objected to as irrelevant matter, not raised by the issue we are trying.

With regard to the stove and spoons referred to by Mrs. Peck, Mr. Murdock's spoons were missed soon (at the first tea or breakfast) after she left. All the kitchen utensils were gone, and crockeryware and stove brushes and shoe brushes, and Mr. Murdock at once said Mrs. Peck must have taken them away, and expressed himself very much annoyed. He then spoke about it that he'd make her bring the spoons back. He said he wouldn't part with them, because they were family spoons. He didn't mind any thing so much but the spoons. I heard nothing further about it for a week or weeks after. Mr. Murdock enquired if I knew where the stove was that belonged to the parlor. He said it had stood in his library, in the corner of the room, and the pipe was up in the attic. I went to the attic, an open space; I saw no pipe there. I knew the pipe, and it was not there. He concluded Mrs. Peck must have taken that also. He sat down and wrote a letter, and a copy of a letter to Mrs. Peck. He stated his reasons for being so particular about it, that he would take action against her, did she not return them immediately. I saw him with the letter, and a copy of it. The letter he enclosed in an envelope addressed to Mrs. Peck, and delivered it to my son Charles to take to her. This is in his hand writing, as was also that he gave to my son to take. He was very urgent about it, and directed my son Charles to take it immediately. That is a copy of the letter. I saw them both. 4380

(All this objected to, as irrelevant matter not raised by the issue.)

Question.—Was the one given by Mr. Murdock to your son Charles, a copy of that? 4390

Mr. Weatherbe objects, being leading, because, when the Counsel improperly in his last question suggested a comparison, the witness simply answered that he saw both, and that this is an improper attempt to lead the witness.

Notice to produce dated August 9th, 1876, proved and put in evidence marked "G," "G. T. S."

Copy letter referred to put in, filed, and read, marked "H." "G. T. S."

Mr. Weatherbe objects to conversation with Mrs. Peck, on additional ground that no time and place was mentioned.

They came back to the house, and Mrs. Peck, some few days after, told me she had sent them back. She mentioned that to me in my office. She said she took the spoons by mistake 4400

Question.—Mrs. Peck stated in her evidence that you had opened a letter from Mr. Murdock to Miss Crowe, did you, or did you not do so?

Answer.—I did not. I came home one night with Mr. Murdock, I think it was in the Spring of 1875, on leaving Mr. Murdock, in the evening to go home, Mrs. Peck followed me.

Mr. Weatherbe objects to any conversation between witness and Mrs. Peck as irrelevant, and that no time and place has been given.

Judge admits the evidence.

She followed me, and said she wanted to show me something, and urged my return. I did not go back. The following evening, or next after that, I went up with Mr. Murdock again to the house, and as I was leaving, Mrs. Peck stopped me, and asked me if I would come in the kitchen. I did so. She had an envelope in one hand, and a note in the other. She said to me, "read that." I glanced at it, and asked her where she got it from. She told me that Mr. Murdock gave it to her to mail, and she had opened it. I censured her for having opened that letter, and told her she had done a very wrong thing, and she begged me not to say anything about it. She entreated me not to say anything. I looked at the envelope, it was torn so that it could not be put in again, and she tore it (the letter and envelope) in a half-a-dozen pieces, and threw it in the cooking stove. I never saw 4410

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any other letter addressed to Miss Crowe in Mr. Murdock's hand writing. (All this evidence objected to.)

Question.—Did you ever state to Mrs. Peck or her daughter, or both, in Mr. Murdock's kitchen, or elsewhere, that he (Mr. Murdock) was not fit to do business any more, and that anybody 4420 could cheat him who wished to, or words to that effect?

Answer.—I certainly did not. I could not have said so in truth, and did not say it or anything having the like meaning or effect. Beside, Mrs. Peck, during the time she was in the house after I got there, never to my knowledge. I never saw her in a fit state to communicate with her on any subject. All the time I was there she was under the influence of liquor.

Mr. Weatherbe applied to the Court to have the remainder of the answer taken down.

Mr. Owen states that Mr. Weatherbe objected to the remaining portion of the answer as given by Mr. Kaulback, and the same not being evidence, Mr. Owen withdrew it.

Our relations at the time were such, that I had no conversation with her. Further, Mrs. Peck or Miss Peck said in her examination "that Mrs. Kaulback and Mr. Murdock were out at the 4430 time down on the wharf walking." I state that from my knowledge of Mrs. Kaulback's health at the time, that she was confined to the room or the house the whole time, Mrs. Peck was there. That's my impression strong. I am acquainted with Mr. Charles Beamish. I remember the time Mr. Norwood was in Lunenburg, in June 1875. The first part of June 1875. We went to Mr. Murdock's together, about 11 o'clock in the morning. I saw Mrs. Peck there on that occasion. I saw Mr. Murdock in his library. He had some books down on the table at the time; we were there only about five minutes, it may have been seven or eight, or ten minutes, it was a very short time. Mr. Murdock spoke to Mr. Norwood. Mr. Norwood was looking at the book, and took one or two out from the shelves to look at them. Mr. Murdock directed his attention to the books, and the order they were in on the shelves, according to the subjects Mrs. Peck came in the room. Mr. 4440 Murdock said something to her, what, I don't know, some kind of an order. She went immediately out. Mr. Murdock put on his hat, changed his coat, and went out with us for a walk. We walked round the square, in a direction from my house, and had a conversation about some property there, and some houses belonging to me. Mr. Murdock talked about wishing to extend his house, enlarging it. We walked round through Water street and up to my house, all three of us, when we had a repast, dinner or lunch. I know we all were there together. Neither I nor Mr. Norwood had anything to drink in the room or house of Mr. Murdock on that occasion. There were no tumblers, nor water nor decanter on the table or inside.

Mr. Murdock had nothing to drink on that occasion. If I am not mistaken Mr. Murdock told Mrs. Peck to get his coat; he changed his coat on the occasion of Mr. Norwood and my visit. 4450 I'm not positive whether Mrs. Peck brought the coat in the room, or whether it was in. Mrs. Peck nor anybody else took tumbler or decanter, or any kind of liquor into the room, on the occasion referred to, when Mr. Norwood and I were there.

(Mr. Owen refers witness to Mrs. Peck's evidence with respect to his getting money from Mr. Murdock, without giving a receipt or receipts and asks him to explain.)

I got money from him on one or two occasions without giving him a receipt. He used to borrow money from me occasionally to return it in a few days. I never on those occasions took any paper from him, nor did he receive any from me. I remember, on one occasion, his getting from me, fifty dollars, I think. (That was the largest sum) to return the following mail (when he was expecting money) which he did at the time stipulated. I remember on one occasion he returned 4460 (I think it was the fifty dollars, in his bed-room. That was the only one occasion, I think, in his bed-room: Those monies borrowed and returned had nothing to do with my accounts. There were no entries of them, nor receipts. Mr. Murdock was always prompt in meeting any such engagements which he made with regard to money. I never knew him to fail.

All this evidence objected to.

Question.—Mrs. Peck stated in her evidence "that for some time Mr Murdock took no interest in money," or words to that effect, was such the case, from your knowledge of him?

Answer.—He always returned me the money he borrowed in full weight. (I had reference to the money borrowed on those different occasions for which he gave me no obligations for the money.)

Question.—Have you anything further to state?
Mr. Weatherbe objects, as improper.

4470

Answer.—Well, rather the reverse was my opinion of him, that he did take an interest in money. Whenever he borrowed money from me, to be returned in a few days (which he did frequently), he always returned it within the time he named. One of those amounts, I remember particularly, because it was larger than usual,—it was fifty dollars,—which he told me he'd let me have back within ten days, which he did, and paid me in his room. The other sums were smaller, none of them exceeding twenty dollars, I think,—all which he returned without me reminding him of it, at the time he named. I remember of him borrowing a dollar from me at Bridgewater, which he returned in a day or two, and reminded me of it. I hold notes of hand against him for various amounts; he on several occasions spoke to me, and remembered the amounts, (all this was between 4480 the time he came back in summer of 1874, up to the time of his death.) I remember more than that, he stated to me the exact amounts due him in Halifax on mortgages. He told me what his property realized in Halifax; how it was invested, (this was all from the time he came back up to the time of his death.) Told me he was very anxious (the day after he made his last will), to have a settlement with Mr. Beamish; that there was a thousand dollars in the bank, deposited in Mr. Beamish's name, and that he had nothing except the integrity of Beamish to show for it. Told me sold his property in Halifax, (wharf property owned jointly between himself, Charles Beamish and Mr. Aikens); that after paying expenses and claims on it, \$52,000 was the net balance, of which money he was entitled to a seventh and a fourteenth. That Mr. Beamish held a thousand dollars,—his share of it,—to indemnify himself against an old alleged claim by Cogswell's estate, I think. He made a calculation 4490 in figures (in pencil on paper, just roughly. I have not that paper; it was probably torn up immediately)—figured up what he was worth, (that was in November). He stated then correctly, without any suggestion from me, the monies he owed me on notes of hand, (this he did from memory, the other, as regards the calculation, on paper). There are many other statements I might make as to the interest he took in money. I don't just remember them. Since then I do remember that when Mr. Beamish was down on the 13th December, he was particularly desirous that I should ask Mr. Beamish if he had any charges against him, other than those in their then settlement; on the occasion of that settlement, he suggested to Mr. Beamish one or two charges that Mr. Beamish should make against him. They were for monies that Mr. Beamish was to pay, or had paid for him, in Halifax. There is a great deal more I might say if I had time to consider. (All this evidence objected to.) I 4500 remember all the times of Mr. Beamish's visits to Lunenburg in 1875. The first visit (in June) I only know from Mr. Murdock. Mr. Murdock came to my house about noon. I think we were about going to luncheon or dinner at the time. He said Mr. Beamish had been up at the house; that he was not desirous of his being with him, or something of that kind. He said he came down to the house to get rid of him, or something to that effect. Mr. Beamish was down at Lunenburg three times after that. Once about the last of September; again about the last of October; again in December. I don't know how long he remained in June; I didn't see him (Mr. Beamish). I remember Mr. Beamish coming to our house one morning in September, I think; he remained over night and left the next morning. (I mean by "our" house, Mr. Murdock's). Myself and family resided there then, and Mr. Murdock also with us, or we with him, whichever you choose to call it. In October, I remember Mr. 4510 Beamish coming one day, (about mid-day), and I think he left Lunenburg next morning, not sure, but I didn't see him in the house after that evening. In December, I think, he was in Lunenburg two or three days. I think I saw him of a Sunday, and all of Monday, and I think he went Tuesday away.

Objected to.

After December, he was not in Lunenburg to my knowledge, until after the decease of Mr. Murdock. I can speak positively as to his not having been there, up to ten days of Mr. Murdock's decease. Mr. Beamish was not in Lunenburg on any other occasion in 1875 to my knowledge. I remember giving Mr. Beamish a drive in September.

Question.—Did Mr. Beamish, while in the carriage with you during that drive, say to you, 4520 "Well, Mr. Kaulback, you ought to prevent Mr. Murdock from making a will or wills, or words to that effect?"

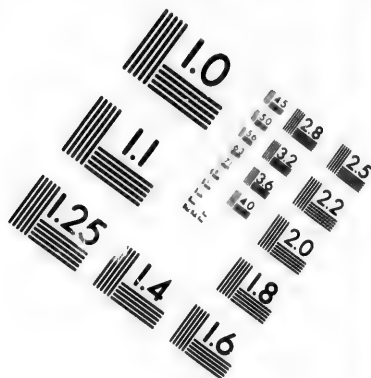
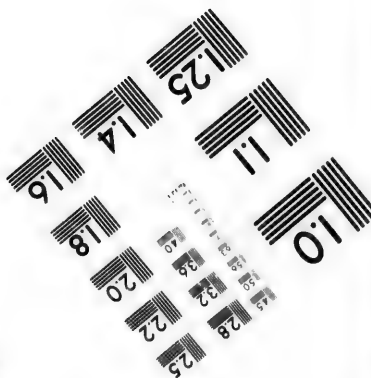
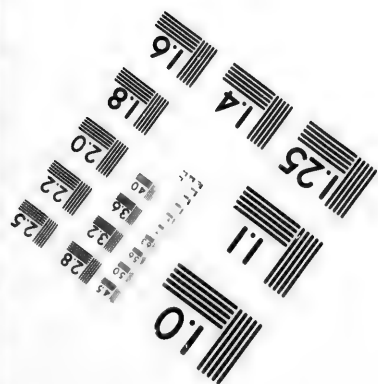
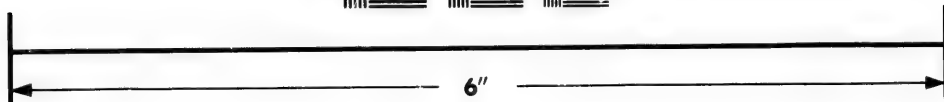
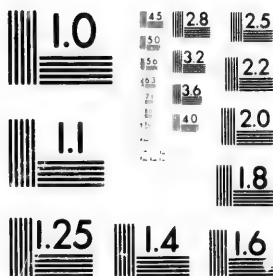


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take him after he found Mr. Norwood was going to remain. Mr. Beamish wanted him to wait and go with him and Mr. Tobin in a private conveyance the following day. Mr. Beamish suggested that, that afternoon, and he plainly and very emphatically told him he wouldn't go with him, that he didn't want to go with him; and he (Mr. Murdock) told Mr. Beamish in substance that he might have sent the little money by Post Office order, and not trouble him with his presence. That was the purport and 4580 only inference that could be drawn from what he did say to him. I did promise Mr. Murdock that, if I could make it at all convenient, I would go with him to Bridgewater that evening, but it was not very convenient, and I preferred staying at home. Mr. Ross and Mr. Norwood were there, beside Mr. Beamish, and I didn't like to leave them. I didn't consider it polite for me to leave them. When I came home in the evening I told Mr. Beamish (I mean Mr. Murdock) it was not convenient to take him. Mr. Murdock reminded me that I had promised to take him to Bridgewater, and he was ready to go. He had no overcoat on, nor anything to go on a drive.

Question.—Had you any conversation with Charles Beamish with respect to the will alleged to have been made by the late Beamish Murdock, in Halifax, in April, 1875; if so, state what Mr. Beamish told you with respect to the same? 4590

(Mr. Weatherbe objects on the ground of irrelevancy, and if on ground of contradiction, that time and place was not pointed out to him.)

(Judge allows the question.)

Answer.—We had a conversation on my return from Ottawa, in the spring of 1875, at Halifax. Mr. Beamish met me in the street, and said, "I was on the lookout for you." He said, "Mr. Murdock's been up here, and he made a will." Then I asked him how Mr. Murdock was, and he said he was very well, exceedingly well. He used a superlative term, I don't know what it was. He said he was exceedingly well. He said, "He's left the bulk of his property to Mrs. Kaulback (which means of course her and her children), and some few legacies here," (in Halifax.) He said, "Mr. Kaulback, Mr. Murdock is very much attached to your family, and very properly so, from 4600 the kindness and attention he has received." He then asked me to say nothing at all about what he had communicated this to me, and that, if possible, I should have a care that he (Mr. Murdock.) didn't spend too much money. He further said that he (Mr. Beamish), I think, was the sole executor to the will. He said that in answer to a question by me. I suppose I'm not allowed to say what I said. Mr. Weatherbe's conversation to me is most insulting and contemptible.

Mr. Weatherbe objects to Mr. Kaulback's stating his reply to Mr. Beamish.

Mr. Murdock, subsequently, (about a week after Mr. Beamish's conversation with me,) said he went to Halifax to get seeds and plants for his garden, and that—

Mr. Weatherbe objects to this conversation and all conversations with Mr. Murdock as to the will of April as irrelevant. 4610

Judge admits the evidence.

He there made a will.

Mr. Kaulback states that (a copy of notice to produce, marked "J." "G. T. S" was served on Mr. Weatherbe about 10.15 a. m. this morning, August 18th, 1876,) (filed 11.5 a. m., and proved).

(Mr. Weatherbe objects that any conversation with Mr. Murdock with regard to will made at New Ross as irrelevant.)

(Judge admits the evidence.)

About a month before Mr. Murdock's visit to New Ross, about 20th June, he told me that he intended to make a will and stated his reasons for doing so. I knew nothing of the 4620 contents of the will made at New Ross, previous to its being made. On that occasion of the conversation, about a month before he went to New Ross, he told me the reason of his leaving Halifax, that Mr. Beamish told him he must go somewhere else, that Mr. Beamish wouldn't have him, that his hours were not consistent with their (the family's habits.) But being in Halifax at Mr. Beamish's house, that he had made a will leaving his property differently to what was his intention. That he was beset by Mrs. Beamish and her daughter, Miss Beamish.

Question.—By whom else?

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(Mr. Weatherbe objects as leading the witness) and reiterates the objection as to irrelevancy of this conversation.

Particularly Mrs. Beamish, and that he left property to Mr. Beamish and to Miss Henrietta James, a sister of Mrs. Beamish, which he never contemplated or intended, but that he couldn't help himself, he was ashamed to say, but that he intended to make a will now according to his own ideas of right. (This conversation was about a week after my conversation with Mr. Beamish, and voluntary on the part of Mr. Murdock). When he went to New Ross he said that he would have his will executed there. That he wasn't personally acquainted with Mr. Vernon Smith, but knew him by repute, and that he would get him and Sir Ross to witness it. I did not know the nature of the will or its contents, nor did he then tell me. I did not see it executed, but on our return from New Ross the following day or the day after, he gave me a large sealed envelope, purporting to be his will made at New Ross, and addressed by Mr. Murdock to this effect: "The last Will and Testament of Beamish Murdock, to be opened by his executors, H. A. N. Kaulback and Charles Beamish." He gave it to me as one of the executors, I suppose, to retain for him. That was before my fire and I put it in my safe, and it was in my safe during the fire. A few days after the fire he enquired after the will and he presumed it was damaged or destroyed as other papers. It was so, and was defaced from the effects of the fire. The ink was partly taken out of the paper by the action of the chemicals in the safe, I suppose. He asked me to bring it to him which I did. The envelope was still over it. He or I opened it and that was the first time I knew the nature of that will. It was in Mr. Murdock's writing. (All this evidence objected to.)

Question.—How was it affected by the fire?

(Mr. Weatherbe objects that counsel led the witness by previously asking him whether the will was rendered useless by the fire, and then withdrawing it.)

Answer.—The will was broken and torn in endeavouring to open it after we took it out of the envelope, and from memory I should say that one-third of it was entirely obliterated, or defaced other parts were so that you would sometimes guess at the words, only from what went before and what went after. About the same time when it was opened, it was left up there with him (in August) he directed me to ask Mr. Ross in my office (Mr. Ross was in my office admitted to the Bar I think filling out his term of servitude, or a portion of it) to copy it, and instructed me to tell him to take out the bequest to Mrs. Peck, and to insert a sentence the property in which we then lived with him, should be possessed by us for a term not exceeding three years. I accordingly did so, and it was executed in presence of Mr. Ross and Mr. Ellis as witnesses. He directed me to ask Mr. Ross to come up and see it executed. (All this evidence objected to.)

Question.—At whose request did Mr. Ellis come there?

Answer.—I don't know.

At the time Mr. Ellis was there, when the will was executed, Mr. Murdock said that he sent for Mr. Ellis. He said this in presence of Mr. Ellis. I think I mentioned to Mr. Ellis that he should read the will to him (Mr. Murdock) fully, clause by clause, (that is the will of the 27th.) I'm not quite positive whether I said this to Mr. Ellis with regard to will made on the 21st or 22nd of August. I think I did; I'm almost positive I did, but I'm sure I did of the will of 27th of August.

(All this evidence objected to.)

The will made at New Ross and subsequently defaced by my fire, I returned to Mr. Murdock after seeing that it had been properly copied by Mr. Ross, with the amendment or addition of— (Mr. Weatherbe objects that this is giving evidence of writings, without proving them or accounting of their loss.)

The Judge decides that witness cannot now give evidence as to the comparison of the papers. Mr. Murdock destroyed the will made at New Ross, after I had taken it up to him and he had given me the instructions with regard to the new will, and the alteration he wished made.

Question.—Was it before or after the will of 21st August, witnessed by Mr. Ellis and Mr. Ross, was executed, that said New Ross will was destroyed by Mr. Murdock?

Answer.—If my memory serves me right, I took the will, written by Mr. Ross, up to Mr. Murdock, with the old defaced will. I think it was after that that it was destroyed. Mr. Murdock tore it up. Mr. Murdock gave the will to me, executed before Mr. Ross and Mr. Ellis, on the 21st August, 1875, in that envelope, marked "J." "G. T. S." and now put in evidence, which contained

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or had this address on it at that time, with the exception of the 27th of August, 1875, which was then the 21st. Mr. Murdock handed it to me, and said: "you've no safe now, what are you going to do with it." He asked me to take care of it. I said the Sheriff had a large safe, and I'd put it in that. His address on the back of the envelope, in ink, is in the hand-writing of Mr. Murdock. I did put it in Mr. Kaulback's safe. Within a day or two afterwards he asked me to get this will for him, that he believed there was a mistake in it, that he had not directed the sale of the real estate to pay the legacies, and he said if it was so the result of it would be the real estate would go to the heirs. According to his directions, I went and got him the will. He carefully opened that envelope marked "J." "G. T. S." and took the will out, (and discovered that, as he thought, the mistake had been made.) 4690

Mr. Weatherbe objects to going into the contents of a document which is not produced nor accounted for,—namely, the will of 21st August. Mr. Weatherbe having reference to the last words, in brackets, which Mr. Owen withdraws.

I saw the will of 21st destroyed by Mr. Murdock about the 1st of November last. Mr. Murdock directed me, when he found this error, to take the will to Mr. Ross and get him to make the alteration with regard to the sale of the real estate. I can't say whether I wrote it out, or whether Mr. Murdock wrote it, or whether it was in writing at all (the direction to Mr. Ross.)

Question.—If the instructions given by Mr. Murdock to you for Mr. Ross's evidence, in writing, or preparing the will of 27th August, 1875, were committed to writing, preparatory to Mr. Ross writing out said will, agreeably to Mr. Murdock's instructions,—have you those written instructions? 4700

Answer.—No, I have not got them. I don't know whether there were any written out; my impression is, that I merely told Mr. Ross what Mr. Murdock's instructions were, and that he wrote them in.

Court resumed at 2 P. M. 18th August, 1876.

The will executed by Mr. Murdock (as he told me) at New Ross, and which was defaced by fire, and also that of 21st August, executed in presence of Mr. Ellis and Mr. Ross, were destroyed by Mr. Murdock in my presence. The latter was destroyed about the first of November. Mr. Murdock made the will of 21st August, because the other was destroyed by fire, and the chemicals in my safe. He asked me to get it, and it was opened, and in opening it— 4710

Mr. Weatherbe objects to the contents of any of these wills, on the ground of irrelevancy, and of the will of the 21st August, in addition, on the ground that they haven't sufficiently accounted for the writing or the draft.

Judge admits the evidence.

It adhered together and got torn, and was greatly obliterated. Then he requested me to get Mr. Ross in my office to recopy it, leaving out the bequest to Mrs. Peck, and the clause—

Mr. Weatherbe claims the right to ask whether these instructions were reduced to writing; and Mr. Weatherbe asks:

Question.—Were those instructions from which Mr. Ross framed the alteration in the will of the 21st August, reduced to writing either in yours or Mr. Murdock's hand-writing? 4720

Answer.—My strong impression and belief is that there was no writing at all, that—

Mr. Weatherbe here objects to the witness being allowed to evade the question, "whether the instructions were in writing," by detailing the verbal instructions received by Mr. Murdock, and he so objected after the portion of the answer above given was minuted, and before the evidence of those verbal instructions was minuted, and requested the Judge not to minute the same, or allow the witness to continue evidence of those instructions till his cross-examination on this subject is completed; otherwise he will abandon it.

The Judge allows the witness to finish his answer.

Mr. Kaulback continues:—That Mr. Murdock directed me to ask Mr. Ross to copy that will (the New Ross will), leaving out the bequest to Mrs. Peck, and inserting a clause directing that myself and family should have the use of the house and grounds, either for three years or for a period not exceeding three years. 4730

Question.—Did you give these instructions to Mr. Ross as received by you from Mr. Murdock?

Mr. Weatherbe objects, on the grounds that witness hasn't shown that they were not in

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writing, and hasn't called Mr. Ross on the subject, or interrogated him when he was on the stand; that he should have exhausted all means of ascertaining concerning the writing.

Judge admits the question.

Answer.—I did, I took the New Ross will to Mr. Ross in my office, and gave it to Mr. Ross, 4740 with the instructions which Mr. Murdock asked me to deliver to him. Mr. Ross followed out the instructions.

Mr. Weatherbe objects on same grounds as above.

He copied it according to the instructions given to me for him, and I took back the "New Ross" will with the one written by Mr. Ross to Mr. Murdock. Mr. Murdock having made arrangements regarding the time of its execution, which I acquainted Mr. Ross of. I mentioned to Mr. Ross the time Mr. Murdock named for having it executed. I think I before stated that Mr. Murdock requested me to ask Mr. Ross to come up and witness the execution of the will at a particular time, which I did, telling him the time.

Question.—Was that will (of 21st August) executed by Mr. Murdock, and in whose presence? 4750

Mr. Weatherbe objects to evidence of the execution of this will, on the same ground as taken in Mr. Ellis' evidence. That if evidence at all, the witness of the will must be called.

Judge rules question out.

I saw the same paper written by Mr. Ross afterwards, on the same day. Mr. Murdock handed it to me in that envelope ("J. "G. T. S.") I saw him put it in that envelope. I saw his name to it in execution of the will in his own hand writing, and his seal thereto.

Objected.

I also saw the signatures of William Ellis and George A. Ross as witnesses. I saw him write the address on the envelope, only the date was then the 21st. He asked me where I'd put it. I said I thought I'd put it in the Sheriff's safe until I got a new one. He told me it was his last will 4760 and testament. A day or two afterwards he asked me for it, to get it, that he thought there was a mistake or omission in it. (I wouldn't be paid to give the exact words he used, but I can give the substance of it). He stated what he believed the omission was, "that he had failed to direct the sale of the real estate in which we were living, to pay the legacies; and if that was not corrected, it would go to the heirs. I brought the will for him from the Sheriff's safe, enclosed in this envelope, marked "J." "G. T. S." He or I opened it in his presence by his directions, and he discovered that he was correct as to the mistake or omission, that there was nothing in it with respect of the sale of the real estate. He read it himself. He then directed me to take the will (of the 21st) to Mr. Ross, to make another will, or re-copy this, and insert a clause directing the sale of the real estate, which I did in accordance with his instructions. Mr. Ross then wrote this here will marked "R," 4770 "G. T. S.," dated 27th August, 1875. It was an exact copy of the will of 21st August, with the exception of the following addition, "and that the said real estate be sold, subject to such right of occupation as aforesaid, together with all other my real estate, and the proceeds thereof applied towards payment of the legacies herein mentioned." Which will of August 21st, destroyed by Mr. Murdock about the 1st of November, is exactly the same as this will of 27th August with the exception of the words above given. I know this of my own knowledge, for I compared it myself with the other will at Mr. Murdock's. I saw Mr. Murdock then enclose the will of the 27th in this envelope marked "J." "G. T. S." I remember there was mutilage got because it had been torn open before and put on, and then Mr. Murdock sealed it and made the date 21 the 27th.

I don't know what he did with the will of the 21st. I have an impression about it, but 4780 don't like to speak as I'm not positive as to what he did with it on the 27th of August. I saw it again about the first part of November, in his possession. There was then some erasures or alterations in it. They were made after the 27th of August, but I don't know when I saw him destroy it about the first part of November. He tore it up. The first remembrance I have with regard to it after the 27th August (that is of the will executed on the 21st of August) was about the first of November. Mr. Murdock had it then lying on his table in his library, with erasures and alterations, and he asked me to copy it. Those interlineations and erasures were in his own hand writing. I followed exactly the paper as altered and amended. I sat down at a desk and Mr. Murdock at a table alongside, when I copied it. He added to it verbally which I followed verbatim as he gave it to me. In several parts of it he stopped me and added to it, I writing down his words. He had 4790 a piece of paper attached to it, the will of 21st, with some alterations on it, the writing on which

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was in his own hand writing, which was incorporated into the paper writing I made, at his request. After I had finished the copy I made from the paper he handed me, and from the suggestions he made to it, he asked me to read it over to him and I read it. He then requested me to engross it. He assented to it, that it was a correct. I won't say he said it was just what he wanted. He approved of it, said it was right. I can't remember every word he said. I declined to engross it, and gave my reasons for it. I told him that he well knew the conduct of Mr. Beamish and what Mr. Beamish had said to him, and it was right that I should not have anything to do with making his will. He agreed to it, thought upon second thought that it was probably best that I did not do it. He then destroyed the will of 21st of August, with the alterations on it, from which I had copied. He tore it up in small pieces. I saw it several times between that and the 15th November (I mean the copy I made in his room, as before described). He told me, I think he told me; yes he did tell me that he had made some alteration in it (in the paper I refused to engross.) I did not know what the alterations were. I didn't ask him, and he didn't tell me. The will was executed on a Monday in November, 1875. On the Sunday before (that is the day previous), Mr. Murdock requested me to ask Mr. Edward Solomon to come up and see him, and when I returned from church in the morning Mr. Murdock asked me if I delivered him the message. I told him no, that Mr. Edward Solomon was in church but I hadn't spoken to him. He then particularly requested that I should see him after church in the evening, and request him to come up that evening. I saw Mr. Solomon that evening coming out of church and asked him to come up to the house. He declined, said it was Sunday evening, and he didn't care to come. I then told him Mr. Murdock had requested that he should come up that evening, and he then went up with me. When we got up and went into the house Mr. Solomon and Mr. Murdock went into the library. I afterwards went in the library; saw Mr. Solomon sitting writing, Mr. Murdock sitting alongside of him on his right. Mr. Solomon, I observed in passing through, was copying from the paper which I referred to as having been written on 1st November which I refused to engross. I heard Mr. Solomon read to Mr. Murdock some parts he had taken down. I heard Mr. Murdock assent to what had been written; that was only a portion at the time. I think I was in and out once or twice; I was in the parlour, went through the library into the kitchen and returned through the library into the parlour. I heard him read it to Mr. Murdock after it was all written. I heard Mr. Murdock request that he wanted to make his will that night, wanted to finish and execute it. Mr. Solomon was then drafting from that paper or will he had before him (the paper that I wrote). Mr. Murdock made one or two suggestions I'm sure of to Mr. Solomon, in addition to giving him the draft from which he was to copy. Mr. Solomon and Mr. Murdock came over in the parlour where I was sitting. The will was not executed that night. I heard Mr. Murdock say to Mr. Solomon, be sure you engross it to-morrow and bring it up for execution. We all sat together in the parlour for some time, may have been an hour, had general conversation and vocal and instrumental music. Mrs. Kaulback played on the piano, I think. I heard Mr. Murdock say to Mr. Solomon when he left, ask him what time it would be convenient for him to be up in the morning to have it executed. I can't say what Mr. Solomon's reply was. The following morning I saw the paper from which Mr. Solomon copied on Mr. Murdock's table in his library. I saw it had been altered.

(Mr. Weatherbe now calls for the production of the draft of the will sworn by Mr. Solomon, one of the attesting witnesses to be in the handwriting of Mr. Kaulback under notice to produce.)

Mr. Owen states that the paper written by Mr. Kaulback about 1st of November, and from which Mr. Solomon copied on the Sunday evening referred to, was subsequently destroyed by Mr. Murdock, as the witness stated he was going on to prove, and the paper written therefrom by Mr. Solomon at the request of Mr. Murdock on the Sunday evening referred to has been already filed.

I state that I was going to mention what became of the paper when Mr. Weatherbe interrupted me. The paper I wrote I saw lying on Mr. Murdock's table in his library with amendments and alterations in the handwriting of Mr. Murdock, made by Mr. Murdock, and I think one alteration was in the handwriting of my daughter Edna. One alteration was in the following words, "on her personal individual receipt in writing." Mr. Murdock then took that paper on which the alterations were and tore it up about 9 o'clock in the morning before I went to my office, on the Monday of and previous to the execution of the will. Then he requested me

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to go to Mr. Solomon's office, and after the will was engrossed by Mr. Solomon to take from him the draft (I mean the paper that Mr. Solomon wrote on Sunday evening and bring it to him.) I did so; went to Mr. Solomon's office, ascertained that the will had been engrossed, and took the draft from him (that which had been made by Mr. Solomon on the Sunday evening). I gave it to Mr. Murdock in the evening; I intended taking it up at noon but forgot it. Mr. Murdock, when I brought it to him in the evening, requested me to put down his name and those of the witnesses in order to make it a perfect copy, which I did, and he kept it—the draft—in his possession until after I purchased a new safe (I think I purchased it in December), and then he asked me to put it in my safe, which I did. That is the draft in writing of Mr. Solomon now on file. I went home (on that Monday the will was executed) about noon. I went into the parlour and saw Mr. Murdock with a paper in his hand open. Mr. Wentzel and Mr. Solomon were also sitting by the table. Mr. Murdock appeared to be just about putting the paper down. I said, "I believe Mr. Murdock is about making his will" (that's the substance of what I said); "I should like it to be read to him," and then I passed out. I went in one door and out the other. Some time after (it may have been twenty minutes or half an hour) I was called that Mr. Murdock wanted to see me. I went in and into the room; Mr. Wentzel, Mr. Solomon and Mr. Murdock were in the room. Mr. Murdock said that was his will, and asked me to take care of it. (It was the will in question in the envelope sealed up, which is proved in solemn form.) He said that was last will, and requested me to take care of it. I think some person called me and I left the room, having remained in the room about five minutes, and being in general conversation with Mr. Wentzel, Mr. Solomon and Mr. Murdock. I left and took the will with me, and left Mr. Solomon, Mr. Wentzell and Mr. Murdock there.

I had not seen Mr. Wentzel that day previous to the execution of the will or subsequently on that day.

Question.—Were you instrumental in any way in Mr. Wentzel's going up to witness the will?

Answer.—I was not instrumental in either Mr. Solomon or Mr. Wentzel going up as witnesses.

Question.—Had you anything to do, either directly or indirectly, in selecting the witnesses?

Answer.—No, I had not, unless it may be that I asked Mr. Solomon on the Sunday evening to go up to Mr. Murdock's at Mr. Murdock's request. But I never, at any time, suggested to Mr. Murdock what witnesses he should have to any will.

Court adjourned Friday, 18th August, to Wednesday, 23rd August.

Court resumed 23rd August, 1876.

From the time Mr. Murdock came to Lunenburg, up to the time of his decease nearly, when I went to Ottawa, I was in the habit of holding very frequent conversations with him almost every day, when he was not away,—on most every subject—religion, politics, law, history, and general subjects—that would suggest themselves by current events in the newspapers, and on walks and drives. There was always a freshness and vigor in his conversation. I may say that, in all my conversations with him, I derived information.

Question.—How long did that continue from the time of your first meeting him in Lunenburg?

Answer.—Up to within about ten days of his death, when I left for Ottawa. I would generally consult him with regard to questions of law arising in my practice, up to the time of my fire. He would frequently make up Briefs for me; sometimes they were in writing; sometimes from memoranda from books. He would sometimes have the places marked in books. All such papers and my law papers were all lost in my fire. I don't know of any papers of importance being saved.

Question.—Did you consult him after the fire? if not, why not?

Answer.—After the fire, my business was very much deranged and broken up. I could not

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do much business, and I had no law library of my own to refer to, it having been destroyed by fire. But he frequently made valuable suggestions to me as regards cases I had in hand, and that I remember, up to the last of December, 1875.

Question.—State anything further you may desire on any subject, with respect to your conversations with him?

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Answer.—He took a very lively interest in events occurring in every part of the world, and all telegrams, foreign telegrams, in the newspapers, we would generally discuss. We did not agree on every subject; many political subjects we differed on.

Objected to as irrelevant.

We differed on many subjects of a political and public character. We always discussed them logically and clearly. (I mean Mr. Murdock did). I remember the last evening I saw him in this world. I had a conversation with him. It was Saturday evening. The papers came in as usual, and we talked over the news. I remember three subjects, and they were suggested by what was seen in the papers. It was in reference to England's possessions in the East, and England's proposed purchase of a portion of the Suez Canal. He thought it a wise policy in England getting rights in that Canal. And of Russia's encroachments on Turkey, or designs on Turkey; and I remember the very last words he said on that subject, which were "the crescent must give way to the cross." Another was about Gladstone and Disraeli, comparing them as statesmen. He spoke of Gladstone as a great scholar, but that in politics he was persistent. He compared him in that respect with Disraeli, as to his ability and education, and his consistency, and of the things Disraeli had to contend with in coming to his high position as a statesman. I remember he stated Disraeli was a Jew, and on that account he was prejudiced against him, and his social position was against him wasn't high. That he hadn't the advantage of a university training, that he had to rely entirely for the mark he made on his own personal efforts and ability. And spoke of the difficulties with which a person in his position had to contend in rising to such a high position in so aristocratic a legislature.

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All the evidence in this paragraph objected to as irrelevant.

Judge admits the evidence.

He spoke also of his first efforts and perseverance in Parliament, and of his courage, and spoke of his first speech in Parliament, and of his having said the time would come when they'd be glad to listen to him. There was another subject suggested by something in the papers. I think Mr. Murdock asked me if I had seen the Indian Chiefs at Ottawa. He spoke of the Governor-General's visit to them. Some time previous to that he spoke of the loyalty of the Indians, and the war by which England lost her Colonies in America. He spoke of other Loyalists amongst the Indians, and that many of them had settled in Canada, and formed settlements there. He spoke of their many feats, and the services performed by them in favor of England's holding her possessions. He spoke particularly of one Indian Chief by the name of Brant, who was deserving of special notice, whose deeds ought to be handed down. He spoke of the assistance they rendered England in the war of 1812. He spoke of the policy of the United States with regard to the Indians, that they had not treated them in the manner they deserved, and how essential it was for Canada to keep faith with the Indians. I think that was about the purport of it. That it was characteristic of the Indians to remember any breach of faith, and that they would have revenge.

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Question.—Were there any directions given by Mr. Murdock to you on that occasion?

Answer.—On the following day, being the day I left for Ottawa, (that was the last I saw of him that day), he asked me to go to the Registrar of Deeds Office, Halifax, and get from there an assignment (of property of Burton's, I think), an assignment of a mortgage. He told me, I think, it was an assignment from Burton to Beamish, and from Beamish to Murdock, that is my impression of what he said, and if it was not there, to inquire for it of Mr. Beamish, and get it for him. He also requested me to pay a bill of twenty odd dollars at Scott's, (the Naval Depot, Halifax) for him. He also told me to send newspapers from Ottawa to his cousin in Ireland, and he gave me the address of his cousin. I remember he requested me to write him from St. John's and also as soon as I arrived in Ottawa. If at any time I wished to know any date or event, I always went to Mr. Murdock, and relied upon what

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he told me as accurate, and that I did from the time I first saw him, to the time I last saw him, about the last of January, 1875. It must have been the last Sunday in January. The Sunday previous to that, he was in Church with me in the morning; and the week previous to that, he was out walking down town with my little child, about 9 years old. Mr. Murdock had a library. It had been considerably broken up by his removal to Halifax in 1874. He parted, I think, with some of his works up there, but he had a good library, on almost every subject. He arranged all his books in his library, and could readily find any book asked for, and of which he wished to have any conversation. If any book was missing, or if I took down any book, or a book appeared to be gone, he'd enquire after it. Referring to a book, he has frequently asked me, and told me where it would be found, and I would go and get it, and that command of his library he possessed up to the time I last saw him, except on occasions of sickness. His particular sickness was in December, 1875, about a week or ten days before Christmas. The doctor thought he was very sick, and I didn't think he would recover. In September, I think, he was suffering for two or three days, that he was invalided. I remember so particularly his sickness in December, I thought he was very sick, and I asked him if I had better not send for his relations or friends in Halifax. These are the words he said, "I say emphatically no." "I want to see none of them. I would like to see cousin Aiken, but he's too enfeebled to come down at this season of the year." I remember his saying that we needn't to be so much alarmed, that he wasn't so sick as we thought he was, that he'd be all right again.

Question.—Wasn't there another occasion when he broke his rib?

Answer.—Yes, but that was before in January.

Question.—Before what?

Answer.—Before the time I'm just narrating. (I won't say it was in January, it may have been in February.)

From my knowledge of Mr. Murdock from the time he went into his house, (about the 1st of August 1875, up to the end of January last, except the time of the end of January last, except the time of the sickness mentioned, Mr. Murdock dressed and undressed himself, without any assistance, and required none. Two-thirds of the time I have seen him go to bed and be in his room reading to him while he was going to bed, or preparing for bed. As to his food—he was very particular as to his diet. He had an aversion to several things, and if they were mixed up in his soup, or anything else, he could readily detect it. He was very clean in his person, scrupulously clean in his person, and changing his clothes. He used frequently to make the remark that cleanliness and godliness were akin, that there couldn't be a dirty christian. I never heard him make any extravagant or absurd remark with respect to Mrs. Kaulback. He always spoke with the utmost respect of her, and to her, and that from the time he became intimate in our house, up to the last I saw of him, I never saw him offer Mrs. Kaulback any ardent spirits other than wine, and Mrs. Kaulback, to my certain knowledge, has a repugnance to ardent spirits—would not partake of it as a beverage. I have seen her take Scotch and Rye whiskey, both mixed with something else, under the directions of a doctor. Rye whiskey and milk. I think it was, Dr. Tupper recommended it to her for weakness of the chest. And I remember on one occasion in the evening, her taking some hot Scotch whiskey, and something in it. I forget what, at the recommendation of Mr. Murdock, he said it was good for a cold. He said it was his cure (hot Scotch whiskey) for a cold. I remember Mrs. Kaulback had a great aversion to taking it. Mr. Murdock, I remember, mixed it for her on that occasion.

Question.—Is that the only occasion on which you remember Mr. Murdock recommending Mrs. Kaulback taking anything stronger than wine?

Answer.—I don't remember any other occasion. I feel sure he wouldn't have thought of asking her to take it as a beverage, he had too much respect for her to ask her to do so.

Question.—Do you remember any particular act of Mr. Murdock with respect to translating a book, if so, state particulars, including the time.

Answer.—He was translating a book, Deany's, a French work, on New France or Acadia. I remember him translating the book in November last. He was translating it before my fire, and took it up after that as his sight improved. Some days his sight was better than others.

Question.—You say that he continued it during the month of November?

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Answer.—I did not say during, but in the month of November.

Question.—About how often did you see him translating that work in November?

Answer.—I can only remember once. I know it to be November, from its being some days, or a week after, Mr. Beamish was down on a visit the end of October. And I remember it as being some days after, Mr. Murdock got me to copy the paper I referred to in my direct examination for a will.

Charles, my son, went to college in the early part of October last, and Mr. Murdock, with others, assisted in preparing him. It was only decided in September that he should go to college. He was young, and required a great deal of preparation, and Mr. Murdock gave him great assistance; and after his return from college, about Xmas, Mr. Murdock examined him as to his proficiency, and expressed himself very much pleased with the progress he had made in the short time he had been at college. He also assisted my daughter with her French and German, from the time he first came, to the time of his death, or the time I last saw him. She had been away to boarding school, and in consequence of our fire, was obliged to remain at home, and Mr. Murdock was very anxious for her to keep up her French and German. Mr. Murdock played the flute and piano some. He continued playing the flute and piano up to the time we, Mrs. Kaulback and I parted from him. (When I went to Ottawa in January last, and Mrs. Kaulback went with me as far as St. John's). He played chess with me up to the first part of January last. We generally played about twice a week in the evening. He played a very fair game of chess, and but for his impaired sight, would have won games from me which I believe he lost through his impaired sight. Mr. Murdock would rise very early, particularly in Summer time, and more particularly after my fire. And generally would rise very early, and go out to his garden, of which he had control and superintendence, and then he'd come in about 8 or 9, and prepare for, and sit down to breakfast. He generally said grace at breakfast, and at all the meals; and on this subject, I may say, that in retiring at night, he would request Mrs. Kaulback, my daughter, or myself, to read a passage from the Bible, and select the passage himself. He'd then ask the family to join in prayer, and he would make an extemporaneous prayer, and generally in his prayers, he would bring in any event that had occurred, and suit his prayers to the occasion. Mr. Murdock selected and gathered all the seeds from the garden. I remember he had some sixty packages done up, that was during September or October, and part of November, I think. I have seen him pick them, and put them in packages, and label them. These produced, marked "K., G. T. S.," "L., G. T. S.," "M., G. T. S.," and filed and received in evidence, are three packages I found in his seed bag, which were left after the seeds were planted.

Objected to as irrelevant.

I have seen him address them, and these are in his hand writing. I can't swear I saw him address these. I have seen him address some late in October, or first of November. I have seen him, about November, I suppose, when the frost was coming, house plants from the garden, to be kept over Winter. I think it must have been about the last of November last, in consequence of the ground being frozen, and he had to wait for a thaw and a rain to get them out. During the time Mr. Murdock was here, from the time he first came, he always accompanied us on any pic-nics or gatherings of that kind, any recreations, or excursions, our family went upon, he was always with us. He was at a Sunday school pic-nic of the Church of England last September, round the harbour, at a place called the "Sheriff's Head," and he was down the back harbour, some eight or ten miles, on an excursion in boats, a pic-nic from which I remember we returned very late at night—it was very dark, and we could hardly find the way. It was a very rough road. Mr. Murdock walked home on that occasion from the landing in the back harbour. I think some of the rough part of the way I had to assist him. I hadn't to, but I did assist him. On another occasion in September or August last, there was an excursion open to the public, given by the owners of the sailing packet between this and Halifax, (Captain Burns). The excursion was out some eight or ten miles, catching fish, and returning for a chowder in the evening. Mr. Murdock joined in trying to catch fish, and all the amusements on board. He had his line over fishing.

The greater part of us had our lines over fishing. I remember that on that occasion he proposed the health of the captain and owner and the success of the enterprise in which the vessel was engaged. I remember particularly his referring to Captain Young who had a share or interest in the vessel, and what he had done and assisted in building up the commerce of this port and the impetus

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he had given to agriculture, the fisheries and trade. He was out I know several times spending the evening during last Autumn. He went by invitation to spend evenings with different families in town. (Objected to as irrelevant.) He was at Mrs. Gaetz's and at the house of the rector of the parish, and I met him at the Sheriff's, and spent the evening there last Autumn some time. He was out driving with me in December last. He was at Bridgewater with me in November last, distant 12 miles. I know this paper produced, it is altogether in the handwriting of Mr. Murdock. I have not read what is on the back of this paper, but he handed it to me in July (paper put in evidence and filed, endorsed "memo. of mortgage" and marked "No. 1." "G. T. S.") Mr. Murdock after returning from his visit to New Ross the end of June, told me that he would make out a statement of his mortgages for me. Some time in July he gave me this paper stating that it contained a statement of his mortgages with the exception of one at Lunenburg from Mr. Mixner. This paper was in my hands until some four or five days before the fire. He gave it to me as containing information and instructions as regarded his mortgages in Halifax. He asked me a few days before the fire to give it to him, he wanted to make a copy of it. He had it till after the fire and I got it from him, he gave it to me after he had the copy of it made, I won't swear he made another copy of it, but he got it for that purpose and kept it until after the fire. All the writing in ink on that paper is in Mr. Murdock's handwriting.

Q. Mr. Francis Morash referred to an interview by him with Mr. Murdock, and to Mr. Murdock sending for Mr. Daniel Owen relative to the subject matter of said interview. Can you give any information in connection with the matter, if so, explain, and had you any conversation with Mr. Murdock on the subject, if so, what? (Mr. Weatherbe objects to question on ground of vagueness and irrelevancy.) (Judge admits question.) A. After we went to reside with Mr. Murdock, Mr. Murdock informed me that Constable Morash had come there for rates or taxes. Mr. Murdock stated he owed none and went on telling me how long he owned the property he had possessed in Lunenburg, and what taxes he had paid on it. I remember he particularly mentioned that the last money he paid in Lunenburg was taxes on his property before he left for Halifax. He asked me what I would do if I were in his place. And I advised him and told him I thought it was very wrong that the tax was improperly imposed. I said it was rather annoying, but it was not very large and he had better pay it rather than have any trouble about it. He said he would not pay it till he got some further information upon it. That he would see Mr. Owen, the clerk of the peace, to see whether he was properly assessed in the books. He subsequently told me that he had seen Mr. Owen, and in substance that Mr. Owen argued it was hard or wrong, but he had better pay it without any trouble. He told me he had paid it. I know Thomas Myrer who gave evidence in this matter.

Q. Mr. Myrer, in his evidence, stated that he called at Mr. Murdock's for the payment of an order from Mrs. Metzler when he (Mr. Murdock) said he did not know about the order and stated that you said to Mr. Murdock, "have not you handed it all over to me, what have you got to pay, 'you are an old, childish man, and if Mrs. Metzler wants anything let her come to me.'" State what you know with regard to the matter or conversation referred to by Mr. Myrer? A. At the day referred to Mr. Myrer met me in the street on my way to Mr. Murdock's, and asked me if Mr. Murdock was home, he had an order on him "from Mrs. Metzler." He mentioned the amount, I forget exactly what, fifty odd dollars I think. (Mr. Weatherbe objects to all evidence with regard to the amount of the order mentioned by Myrer as being irrelevant and not the subject matter of contradiction and on this ground that the order itself should be produced or accounted for.) (The Judge receives the evidence subject to the above objection.) I told him the matter was entirely in my hands, that Mr. Murdock had handed it over to me, and that I had written to Mrs. Metzler, and I further told him that under the circumstances he should not interfere, should mind his own business. He said Mr. Murdock should pay his grog scores as well as anybody else. (Mr. Weatherbe objects to conversation with Myrer.) (Judge admits it.) He then became impudent, and I left him shortly after. I heard him in the room with Mr. Murdock. I went in. He had an order on Mr. Murdock from Mrs. Metzler for fifty-four dollars and sixty cents, being the amount Mrs. Metzler claimed by a bill rendered. Mr. Murdock replied that he had nothing to do with it, that he had handed it over to me to do as I considered right. He mentioned me as the attorney at the time. I then let Mr. Myrer understand that he should go about his business, that it would not be paid. I state that all

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the conversation at that time as regards "handing over to me" had reference entirely to this disputed bill, and in no way had relation to Mr. Murdock's property. That I have no remembrance of saying he was a childish man, or an old childish man, and never intended to convey by any remark I made on the occasion, that he was childish. As he was not then childish and I have never known him to be childish since or subsequently to that time. I meant previously or subsequently to that time. I have nothing further to say (Mr. Kaulback explains that it was in reply to the clerk, who seemed to think I had not finished my statement. The clerk said "yes" as he generally does when he is ready for me to go on with the statement, and the words "I have nothing further to say" were merely to let him know that I had finished.) Mr. Myrer demanded by the order fifty-four dollars and sixty cents (Objected to as irrelevant.) I saw the order, Mr. Murdock handed it to me. I don't know what became of it. This account which I hold of Mrs. Metzler's was rendered to Mr. Murdock about a week or ten days before Myrer made the demand, and after I had written Mrs. Metzler in answer to the claim. (Mr. Weatherbe protests against the evidence being read over to the witness, as he states it has been continually done.) (Judge allows a portion of the evidence to be read to witness.) (Mr. Weatherbe objects to the admission of the account as irrelevant.) (The account marked "O. G. T. S." put in evidence filed and read.) I, as the attorney of Mr. Murdock, wrote a letter to Mrs. Metzler in connection with that account, dated 4th September, 1875, and I mailed it the 6th September, 1875, to Mrs. Metzler. The paper I put in the office directed to Mrs. Metzler is an exact copy of this paper produced. I can't say whether I was alone when it was compared (Mr. Weatherbe objects to reception of this letter as original, is not accounted for, evidence of mailing not sufficient, no evidence that the original ever came to Mrs. Metzler and irrelevance) (Examination in connection with the notice continued.)

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Q. Do you know that Mrs. Metzler received the duplicate of this? (Mr. Weatherbe objects that the question is leading and that the only mode of proof by admission of Mrs. Metzler of receipt of original of this is by proof of comparison of them. A. I mailed an exact copy of this letter on the sixth of September, 1875, on the trial of a cause between herself and Mr. Murdock in October last. She acknowledged the receipt of it. Mr. Owen tenders the paper. Mr. Weatherbe renews above objections and contends that the original could have been produced. Judge admits the letter marked "P. 2, G. T. S., read and filed and put in evidence.) I remember Mr. Joseph Outram, Jr., being at Mr. Murdock's about the first of October, shortly after Mr. Charles Beamish left, [in the last of September] I read it, and I have no doubt but what this is the letter handed by Mr. Outram to Mr. Murdock on that occasion. I have no doubt about that being the letter from the appearance and the subject. Objected to as entirely irrelevant. Judge decides to receive this letter. (Letter put in evidence read and filed, marked "R. 2, G. T. S.")

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Q. Have you anything to state with regard to Mr. Outram's visit and Mr. Murdock's health at that time. A. Mr. Outram seemed to urge upon Mr. Murdock, a renewal of the invitation to his father, as referred to in that letter; (Mr. Weatherbe objects to the statement of Mr. Outram as irrelevant,) which he appeared reluctant to do. Mr. Murdock was then confined to the house for a couple of days. I remember Mr. Murdock going to the closet and getting out two bottles, sherry and whisky, and offering it to Mr. Outram. Mr. Outram took some. I don't know whether whi-key or sherry. Mr. Murdock also took some and I did so myself. Mr. Murdock referred to Mr. Outram's father. Do not remember exactly what was with regard to their past friendship.

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Q. Was Mr. Murdock imbecile or childish on that occasion? A. In no way did he appear childish or imbecile, neither by act, manner, or expression, did he indicate anything imbecile or childish. But he was not very cheerful that day. Did not feel well. As regards his staining his trousers, I have never known Mr. Murdock to have his trousers stained from any weakness of nature. His weakness was of a different kind, irritation of the bladder with a difficulty to make water. His person and dress was clean on that occasion as it always was. After Mr. Outram left Mr. Murdock stated to me that he remembered that when he had lived in the other house, he had given the invitation but he was circumscribed at the present time and could not continue the invitation. I never saw Mr. Outram there but on that one occasion.

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Q. With respect to the evidence given by Joseph Creighton, Thomas Curll and George A. Ross, respectively, relative to evidence given by you in the Supreme Court in the cause between Mrs. Metzler and the late Beamish Murdock, deceased, with regard to the liquor supplied by you

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to said Beamish Murdock. State what you know with regard to the matter, and explain, if necessary, the evidence referred to. (Mr. Weatherbe objects that the explanation called for by the question, is not admissible in evidence, and that the witnesses mentioned swore that Kaillback supplied two gallons of whiskey a week to Murdock, etc., which must either be contradicted or admitted.) A. I cannot remember the exact statement I made under oath at the trial in October. I state that I could not have made the statement as made by Mr. Creighton and Mr. Curll because they are both inconsistent as to the facts, with regard to the liquor supplied. I further say as regards Mr. Ross's testimony that I may have stated under oath what he has given in evidence in this cause, as its reconcilable with the facts of and regarding the liquor supplied to Mr. Murdock. For the facts of the liquor supplied are as follows, that the liquor was not supplied at any periodical times, that is any special periods of time. That to my remembrance there was liquor got in the name of Mr. Murdock, upon an average every week or ten days about two gallons, in a two gallon jug, which liquor supplied was to be returned to me out of a cask to be ordered, which was ordered and received a few days before the burning of my property, but was never tapped. Mr. Ross's evidence is not inconsistent with those facts. That was the case from the Spring after my return from Ottawa in April or May up to the date of my fire, 29th July, 1875.

Q. Was such the case after the fire? A. No. I supplied Mr. Murdock with no liquor after the fire, but in this way after I went to Mr. Murdock's, some weeks I desired that there should be some understanding with regard to the expenses of the house. I suggested to Mr. Murdock what I considered proper to be done, which was that he was to do any repairs necessary to be done to the house itself, at his own expense. That I should provide everything we required in the house. Mr. Murdock agreed, with one exception. He said he was not aware that he had got liquor from my house which I never charged him with, and that he desired that all liquors should be supplied by himself, at his own expense. We compromised by having it understood that all liquors, other than Rye Whiskey, that I supplied, and that he pay for a cask of Rye Whiskey which I ordered immediately at his directions from Canada, which I charged him with, and I think a basket of champagne which I think he expressly ordered.

Q. Who supplied the house with provisions after that? (Objected to as irrelevant) A. Myself, at my expense. We supplied the house with cooking utensils, and all things necessary for consumption, and all things necessary to be supplied after Mrs. Peck left. I mention, in order to make my evidence quite consistent, that I know of Mr. Murdock getting some few articles from Scott, the grocer, of Halifax, after we were there. It was purely at his own instance and desire, at his own special desire to get it himself.

Q. What were Mr. Murdock's habits with respect to drinking from the time you moved into his house in August, 1875, up to the time of his decease, or up to the time of your last seeing him. A. I cannot remember ever seeing him under the influence of liquor during that time. He would generally, when drinking, take what might be called a third of a glass, about two or three table-spoonsful, and then would generally fill up the tumbler about two-thirds full of water, and upon an average those drinks would last him for hours before he did finish them. His habits previously to the fire, were generally very good. I have seen him on one, two or three occasions that I believed he was slightly under the influence of liquor. I never knew him to leave my house under the influence of liquor, and but on those two or three occasions when he came to my house I thought he was slightly under the influence of liquor. I never heard it stated that Mr. Murdock left my house from a party under the influence of liquor until Mrs. Peck gave her evidence, neither did I know that it was the same night that there was a party at my house until Mrs. Peck intimated it. A few days before the fire consumed my house, I was up at Mr. Murdock's, "He then stated he would be obliged to make some change in his affairs that the money was going too fast from him, that he had reason to believe, that money he gave Mrs. Peck to get things for in the house. That she did not appropriate it for that purpose, but got them at my house. That Miss Peck came there early that Spring, sought for an asylum until she was married, which was to have been in a few weeks. He remarked he considered her dresses, the way she was dressing, was at his expense. That she was extravagant in her dress, had a belt with a parasol or umbrella dangling at her side." He felt surprised at the quantity of liquor that had been brought up to the house in his name, which she, Mrs. Peck, acknowledged, did not deny the quantity when I told her. He was worried to know what he should

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do. He then told me, as a secret, how he had received the injury to his rib. "He said he was stooping to take off his trousers going to bed, that she stumbled against him and he fell against the stove." I knew Mr. Murdock to fall in the garden some months or more after we were up there. I saw him lying in the garden. I saw him when he was being picked up. I saw him come in the house. He said he was stooping and that he got dizzy and fell. He was working at the time. There was no liquor or signs of liquor on him. He complained of the weakness of his ankles. I do not remember or call to mind that Mr. Murdock ever mislaid anything while I was there. I always saw him observe Sunday as people generally do. His conduct on Sunday was generally different from any other. Before we went up there to live he used to spend Sunday at my house, generally came there to dinner on Sundays. When he came down of a Sunday morning, he would stay till about 9 or 10 o'clock in the evening. He was in the habit of going to church twice or three times a month, I suppose, and would sit in my pew or go with us. It is not correct that "Mr. Murdock never left his house to visit mine unless sent for," as Mrs. Peck stated. I know of no special invitation having been given him except when we had something special, a special dinner party, a luncheon, or some other special entertainment. A place was always reserved at the table for him, and he was expected to be there at tea especially.

Q. Reference has been made to Mr. Murdock's visit to New Ross about the end of June; do you remember any particular conversation of Mr. Murdock's on the way to New Ross; if so, state what it was? A. The greater part of the way to New Ross he drove himself, and the conversation, as a general thing, was on things that suggested themselves by the way. Then he spoke about his first visit to the county, and how he was impressed with the appearance of the country, especially in the neighborhood of La Have River and the town of Lunenburg. He spoke of the many advantages it possessed over other counties. It was his idea then how much he would like to make it his residence, either at La Have River or in the town of Lunenburg. He spoke of the cause of his leaving Halifax and coming to Lunenburg; that he had some unpleasantness and disputes in business with some of his relatives. By some means he came to mention that Charles Beamish was no relation of his; that in law his name was Langille; that the father of Mr. Charles Beamish lived with a woman by that name, near Aspatagan. And he spoke about the trouble he had with Charles Beamish when he was a boy in Halifax; of the efforts he made to give some semblance of legitimacy to Charles Beamish, but he utterly failed; and the searches and inquiries he made only confirmed his illegitimacy. On that occasion (in the summer of 1874) he said that Charles Beamish had told him he had to leave them in Halifax, and he came down; that Mrs. Beamish complained of his bad habits and drinking. He said evidently they did not care about him; glad to make an excuse to get rid of him. At New Ross (it was about 36 miles; we went in about 5 or 6 hours) he was very smart when he arrived there, and he took his leading part in all the festivities and entertainments of the visit. On the Sunday after the wedding (being the day following the wedding) he walked to church, about a mile. I do not know whether he walked back or not; he may have done so. In the afternoon our party, including Mr. Murdock, was invited to Mr. Pratt's, a mile distant. Mr. Murdoch walked to the lake, just a rough cow path, through pastures, when he took a boat and crossed the lake, and walked up a very rough pasture to Mr. Pratt's. At the repast, after the wedding, he took a very leading part in the sentiments and toasts given on that occasion, and had a long argument—a discussion occupying an hour or more—with Revd's. Moore, Ellis and Norwood. He differed with them on some doctrinal points of the Church of England. It was a long, and very earnest discussion and argument, in which Mr. Murdoch evidently, from his premises, argued very logically and clearly. I may say that I considered he had the best of the argument. I remember Mr. Beamish being at Mr. Murdock's in December. Mr. Beamish came there. The first I saw of him was of a Sunday morning; must have been the 12th. It was arranged then that there should be a settlement between Mr. Murdock and Mr. Beamish the following day. They agreed upon the hour. I think it was ten o'clock the following day. Mr. Beamish was to come up. He did so at that time Monday (the 13th December). I know the date from the accounts. I left them in the library together; they were then going into their business arrangements. I went to my office and came back about one o'clock. They said they had finished talking over all their business matters. They were sitting together in the library. There was an assignment to Beamish of some property of Burton's lying on the

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table. At their joint instance and request, I took that assignment to my office and made out from it an assignment to Mr. Murdock from Beamish. The amount of assignment from Beamish to Murdock was \$840, beside some arrears of interest. Late in the afternoon, I think half an hour before twilight I returned to the house. Mr. Murdock and Mr. Beamish were sitting in the parlor, round the table, alone, a number of papers and pen and ink on the table, some calculators also. One remarked they had been busily engaged all afternoon adjusting matters. These papers (marked "V 1, G. T. S." and "V 2, G. T. S." filed and put in evidence and read) are duplicates. I could not tell whose hand-writing the originals from which these are taken were in. Mr. Murdock explained the nature of their settlement as contained in these statements, and spoke about what he (Mr. Murdock) was worth. Mr. Murdock stated the certain sum he was worth, less my demands against him, and a small mortgage in Halifax. Mr. Beamish approved of it, and said it was right—that there was nothing else against Mr. Murdock. There was then some consideration between them as to how these papers should be signed, and who should hold them. At last Mr. Murdock proposes that a copy should be made of them which Mr. Beamish should sign, and that he (Mr. Murdock) should sign those then before us. Mr. Murdock then requested my daughter to make copy of the papers, which she did, and these are the copies which Mr. Beamish subsequently signed. Mr. Murdock signed the other (the original). Mr. Murdock on that occasion explained thoroughly all that is contained in these accounts. There was a balance then of \$163.40 coming from Mr. Beamish to Mr. Murdock, agreeably to the settlement and statement they had made. Mr. Beamish was about paying that over to Mr. Murdock, when Mr. Murdock requested me to take a piece of paper and write. He told me just to put down what he said. I did so. Mr. Murdock reminded Mr. Beamish of one or two small amounts he (Mr. Murdock) had to pay for repairs of a watch and some telegraphic charges, and several other items, and which Mr. Murdock suggested should be deducted from the \$163.40 due him from Beamish. This is the paper I wrote at Mr. Murdock's request. I wrote what he told me. Mr. Beamish was present. He told me to put down "watch repaired. \$2.50," to pay Mr. J. W. Johnston. Mr. Beamish then suggested he should pay Mr. James Thompson, for transfer of mortgage, \$5.00. Then there was share of costs in Canada suit; a charge against Mr. Murdoch, \$4.00. Then Mr. Murdoch said there were some telegrams passed between them, which he requested to be put down 50 cents, making in all \$12.00, which Mr. Murdock requested me to deduct from the \$163.40. Then Mr. Murdock asked Mr. Beamish, "Now, Charles, have you any other charges against me, or do you know of any?" Mr. Beamish said "No, he had none, nor did he know of any," and at Mr. Murdock's request I wrote in the paper, "Mr. Beamish having no other charges against Mr. Murdoch," and dated the paper—Lunenburg, 13th Dec., 1875—which Mr. Murdock took with the other papers or statements referred to (marked "V 1, G. T. S." and "V 2, G. T. S.") Mr. Murdock, at noon of that day, when I came up to the house, specially charged me that at their final settlement I should ask Mr. Beamish the question which Mr. Murdoch asked himself. (Mr. Owen tenders the paper last referred to by Mr. Kaulback, dated Lunenburg 13th Dec., 1875, made by him at the request and dictation of Mr. Murdock, in the presence of Mr. Beamish at that date, and wishes it to be read and received in evidence. The Judge rules this paper out.) I state that I did not see this paper again until some time in May, when it was found by myself and my co-executor among Mr. Murdock's papers. Mr. Murdock's mind was then on that occasion in December, sound and clear, as it always was. (Objected to as matter of opinion.) He had a thorough knowledge of his business. He mentioned on that occasion what the property realized in Halifax. Something over \$53,000.00 and that after paying some expenses there remained some \$52,000.00. I remember he mentioned that his share was a seventh and a fourteenth. He then showed of that money \$8,000 was put in the bank—\$7000 in his own and \$1000 in Mr. Beamish's name. The latter as an indemnity for some alleged outstanding claim. The difference between his share of the proceeds of the real estate and the \$8000 deposited, Mr. Murdock explained to me in the presence of Mr. Beamish how it was appropriated, and all was closed up and a specific sum mentioned as being what Mr. Murdock was worth, and Mr. Beamish said it was correct. I think there was some company came in that evening, and Mr. Beamish remained and spent the evening with us. Mr. Murdock was in the room that evening, joining in the entertainment, and upon retiring made his prayer as usual. I remember his saying that evening that it was a relief to him that things were now all finally settled and made right. He had some trouble about—he felt anxious previous to that about

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an amount of \$1000 which Mr. Beamish had in the bank to his own credit, but which belonged to Mr. Murdock: there being nothing to show that it belonged to Mr. Murdock: Mr. Murdock having missed some paper, which showed who it belonged to, from his trunk, after Mr. Beamish's last visit. That thousand dollars was settled by the \$840 assignment and the cash on the day of the settlement referred to, (13th December, 1875) as shown by the statement.

I remember Mr. Beamish being down the last of October. Mr. Tobin was with him. He Mr. Murdock was very much opposed to the visit. If I am not much mistaken he asked him what brought him down, he said to bring some money, and Mr. Murdock asked him if he could not have sent it by P. O. Order. I am not sure this was on that occasion, but I think it was. Rev. Mr. Norwood and Mr. Ross, were there from New Ross, at the same time. I know that when it was said Mr. Beamish was coming to the house, before he arrived at the house Mr. Murdock at once said he did not want to see him; in fact declined seeing him. He did see him. I think I advised him to see him. I think some person else advised him to see him, as he had come from Halifax. I cannot say exactly what the words were, but he was very reluctant to see him. He (Mr. Murdock) manifested at the time an indifference to Mr. Beamish being there and doing anything with him. I know I was in the room when Mr. Beamish paid Mr. Murdock some money. On that occasion Mr. Murdock handed it to me and I counted it. He handed it to me I presume to count. I have a very vague remembrance of the counting of the money, but I know I had it in my hand at that time. I remember Mr. Murdock putting it in his drawer, and I remember him afterwards taking it from his drawer and putting it in his trunk. I infer it was the same money. I saw him take it from the drawer and put it in his trunk the same day. Some question arose about the interest. I was asked to calculate it. I think Tobin got into the calculation ultimately. I infer from my counting the money on that day that Mr. Murdock's sight was worse than usual. His sight was worse some days than others. I do not remember remarking particularly about his sight. I say that what Mr. Tobin said with regard to Mr. Murdock's appearance on that day is totally false.

Q. Was Mr. Murdock capable of doing business on that occasion and did he know the nature of the business in which he was then engaged? A. He thoroughly knew that day as every day, what he was about, and what the business was. Any infirmity at all, that day or any other day, was his sight. I never knew a day that he could not attend to his business unless he was sick. I never knew him to say a foolish thing or do a childish act, and at any entertainment at my house I was glad to have him there from his powers of conversation and amount of pleasure he could bring to the entertainment. This was apart entirely from my own personal feelings towards him. I never addressed Mr. Murdock in a bullying or disrespectful style in my life that I remember, and there was nothing occurred that day (of Mr. Beamish's visit in October) to cause me to make a remark in that way.

Q. Did Mr. Murdock go to Halifax in the Spring of 1874 to reside there, from any misunderstanding with you as stated in effect by Mr. Beamish, and did Mr. Murdock give you his reasons for going on that occasion, if so, state what they were? A. I am fully satisfied that Mr. Murdock did not leave Lunenburg in the Spring of 1874 owing to any misunderstanding with me. There had been no misunderstanding or dispute. There had been some previous misunderstanding with regard to a confession of judgment which was satisfactorily settled to both parties. On the contrary, I believe, that our residing in Lunenburg, and his intimacy at my house made him very reluctant to leave Lunenburg. I further say that Mr. Murdock and Mr. Beamish both told me that he (Mr. Murdock) was urged and prevailed upon to go to Halifax by Mr. Beamish. I have other reasons for knowing it. Mr. Beamish, in the early part of 1874, met me at Halifax on my way to Parliament, and asked me if I would not take back (Mr. Weatherbe objects to any conversation of Mr. Beamish as irrelevant.) (Judge admits the evidence,) the real estate purchased by Mr. Murdock in Lunenburg, at what he had paid for them, less a thousand dollars. He was very urgent that Mr. Murdock should return to Halifax and live with him. He either stated that he had purchased or was about purchasing or getting a house of ample accommodation sufficient to take Mr. Murdock in. I asked him if he had authority from Mr. Murdock to make that offer. He said no, but he thought that we might accomplish it if I was willing. I told him I would not be a party to it that the property was worth all Mr. Murdock had paid for it, and it could be got, and that I would not consent to do such a thing. He urged it on me, and I said "all I can say is, if Mr. Murdock writes me a letter himself at Ottawa, I will consent to it." When at Ottawa I received

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a letter from Mr. Murdock (the letters destroyed) but not making that offer, but asking me what I would give for the property. I then replied stating what Mr. Beamish had told me in Halifax. Several letters passed between us on the subject. Mr. Murdock repudiated the offer and laughed it to scorn. (I did not make an offer, merely told him what Mr. Beamish had said.) I then told him that if he did wait till I came home I would guarantee his getting all the pay for the property we had purchased from him. Before I returned he had sold it for cash for the price for which he had purchased from me. I did not see Mr. Murdock until his return to Lunenburg in the latter part, Summer of 1874, when he informed me at once that he had come back to make it his permanent abode, and vaguely intimated the reasons for his coming back, but did not go into particulars. "There was no congeniality." I think he said the surrounding were not congenial. I made no inquiry and did not search for any information on the subject, and he gave me none. But I thought from that time, that I observed from Mr. Murdock's manner a different feeling towards Mr. Beamish. (Paper marked "W 2, G. T. S." being an address to his Honor George Archibald, Lieutenant Governor of Nova Scotia, put in evidence filed and read.) This paper is in the hand writing of Mr. Murdock, with the exception of the interlineations and erasures which are all mine with the exception of one, and that one is in Mr. Murdock's writing. Mr. Murdock came to my office the latter end of July, 1875, in reference to an expected visit of the Governor of the Province to this town. He seemed annoyed that the Governor was not going to visit this town, he heard he was going to pass by, and no preparation made to receive him. I told him it was not my fault that there had been no communication with me on the subject. That was a part of the duty of the Legislative Councillor and the members. In substance he said you know nothing has been done and nothing will be done. He then suggested and urged me to get him in town. He heard he was then at Bridgewater on his way to Halifax. Mr. Murdock then suggested or said that he would sit down and draft an address if I would have it engrossed, and get it signed, and that I should go to the Bay to intercept the Governor and bring him to town. Mr. Murdock drafted this address in my office on this paper. This is the draft, it was engrossed, and this very draft I took to Mahone Bay to tell the Governor what had been done in Lunenburg, and the disappointment that would exist if he did not come to the Shire Town. I missed the Governor by some quarter of an hour, which I was too late. He had passed through. I returned this draft to Mr. Murdock. He had no assistance in preparing that draft. I took it up and read it over and made these interlineations, he consenting to them. It was done very hurriedly.

Q. State what you know with regard to these letters. (Mr. Weatherbe objects on the ground that no question can be asked with regard to those documents until this hand-writing is proved.)

Q. Have you had any correspondence with T. B. Aikins previously to date of the letters above referred to or subsequently? A. Yes, I have had communication with T. B. Aikins since the dates of these letters. I have had correspondence with T. B. Aikins within the last three months, to which first letter I replied and got an answer to the subject of my reply, and (Mr. Weatherbe objects to any comparison without producing the letter.) Judge admits the evidence. I have not the slightest doubt about these letters, both of them, being in the hand-writing of Mr. Aikins. I have seen documents, authenticated documents executed by Thomas B. Aikins witnessed and proved to be his writing by form of law. I further say that from the period of Mr. Murdock's first coming to Lunenburg, up to the time of his death, Mr. Aikins and Mr. Murdock were correspondents. That I have seen many of Mr. Murdock's letters to Mr. Aikins, addressed to Mr. Aikins, and seen the replies to the subject matter of those letters, from Mr. Aikins, and Mr. Aikins' signature to those letters corresponds to the signatures of those letters in my hands. And I am fully satisfied and believe, and have not the slightest doubt but that these letters are in the hand-writing of T. B. Aikins.

Cross-examined by Mr. Ross,—

I do not know where the letters are I received from Thomas B. Aikins. I searched for them in the place where I supposed them to be, and they can not be found. I am sure I received two letters from Mr. Aikins, within about the last three months, he asked me to send him some letters and papers of Mr. Murdock's and several books of Mr. Murdock's, but I answered him I had no power to send them. I will not swear positively to more than two letters addressed to me by Mr. Aikins, there may have been three. The subject matter of the first letter from Mr. Aikins was with regard to a French book of Mr. Murdock's which he wanted me to send up to him, (Deny's History of New France or Acadia, I think it was.) I think the letter also referred to two books of the Went-

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worth family, and, I am not quite as positive, but I think it was also with regard to some family letters. I think there was nothing else in that first letter. I replied to him saying that the French book, I thought, Mr. Murdock had sent it, but I would make further inquiries in the matter, both here and at Fishwick's Express in Halifax. I think, with regard to the books of the Wentworth family, that I stated that it was Mr. Murdock's intention that they should go into his hands. With regard to the family letters, not being positive that his letters referred to it. I cannot say what my reply was, if any. This covers the contents of my reply so far as my memory serves me.

5440

Mr. Aikins' second letter to me was in reference to same matter. I think it was repeating his desire that I would forward the books or letters and referring to my remarks on the subject in my former letter, and stating, I think, that what he desired to have, have no connection with Mr. Murdock's property, and that I might have sent them, and that my reply was not satisfactory. He did not use those words, but that was the inference I drew from his letter. He urged the request of the first letter. My impression is that I replied to that letter, just answering what was in his letter, and that I would be glad to do whatever I could in furtherance of his wishes. If any such reply was sent, it was of that nature. (Letters from T. B. Akins to Beamish, Murdock, dated respectively, December 23rd, 1875, and January 1st, 1876, marked "X. 2, G. T. S." and "Y. 2, G. T. S.," tendered in evidence.) (Mr. Weatherbe objects to these letters being evidence on the ground, 1st. Irrelevancy. 2nd. Nothing written, by Mr. Aikins, at the time can shew anything as to the charges in the petition. 3rd. Any opinion of Mr. Aikins, if evidence, must be obtained by calling him as a witness and swearing him. 4th. That its quite possible, even in the opinions expressed in the letter, that he was deceived by the letters to which he purports to reply, as Murdock at the time was blind, and the very question to be tried is whether he was not under the influence of respondent.) Judge admits the letter in evidence.

5450

Q. Did you in any way influence, or had you anything to do with letters written by Mr. Murdock, or by others at his dictation to Mr. Aikin or Mr. Charles Beamish? A. No. I never influenced him in any letters or communications with any body, neither did I know the contents or subject of any letters written by any person at his direction, except it may be on one or two occasions he told me he had written to parties and told me the nature of the letters. I have seen him writing letters in December. I remember one day he told me he was writing to Mr. Aikins (in December). He spoke about forwarding some books, or a parcel, to him. I saw him writing in January of this year. It is not correct, as Mrs. Peck stated that Mrs. Kaulback, Mr. Murdock and I were whispering together as to how he would get her (Mrs. Peck) out of the house. I had no plans or purpose about getting her out of the house. We had no whispering; but from my knowledge of Mrs. Peck, I had a conviction that she would not suit Mrs. Kaulback. Mrs. Kaulback would not tolerate her.

5460

Q. Mr. Beamish in his evidence stated that you said to Mr. Murdock "you know that I lent you \$850. Mr. Murdock said yes in a subdued and childish voice." Did Mr. Murdock reply to you in a subdued and childish voice? A. Mr. Murdock never spoke or replied to me in a subdued or childish voice, neither did I ever hear him reply to any one in my presence in a subdued or childish voice or manner. I remember going in the room one day, when Mr. Beamish and Mr. Murdock were present, and Mr. Beamish, in Mr. Murdock's presence told me that Mr. Murdock confirmed the remark I made with regard to the amount of money he owed me, \$850, I think, and Mr. Murdock also assented. And I remember Mr. Murdock stating the sums of the notes of hand which brought it up to that amount. And I remember saying to Mr. Murdock that he owed me something more too, I forget what it was, some bill I paid subsequently. My impression is that this was the time Mr. Beamish was down the latter part of September. Mr. Murdock, at the time he came to Lunenburg in 1872 and previous to that, had a peculiar walk—a shuffling. I think when he first came down he told me the complaint was in his ankles. There was a tendency to swelling in his ankles. He showed me the enlargement in his ankle. I observed it before he came to Lunenburg in 1872, and it continued until his death, not abating anything. If anything he got more feeble in his walk.

5470

Q. From your knowledge of Mr. Murdock, as previously stated by you, was there any change in his mind from the time you first met him in Lunenburg in 1872, up to the date of your last seeing him in 1876? (Mr. Weatherbe objects on the ground before taken with regard to opinion.) A. I believe there was none. I believe his mind was as strong and as vigorous and he

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was as clear in his memory at the time I left in January last as he was when I first saw him here in 1872, and had been so during that period, except at the temporary illness he had in December last (between the 15th and 20th Dec., about) and in the February preceding that (when he was laid up with a broken rib), and at those times his intellect only appeared enfeebled for a day or so. The first time, in February, 1875, he had a high fever, when he thought his clothes were ghosts or people, and in December it appeared to be more the reverse, prostration it appeared to be.

Q. With the exception of those occasions in February and December just referred to, what was the state of his mind from 1872 to 1876? (Objected to.) A. He had a sound, clear intellect, memory fresh and retentive, capable of transacting any business in his line and knowledge of business. I have never known him at any time that he was not capable of doing business or making a will. I do not know of any person here to whom I would refer or have more deference and respect for his opinion and judgment, that is, in all matters which a man bred in the way he was, as a lawyer and literary man, and matters of common sense.

Q. How was he mentally at the time of dictating the draft of his last will and testament; about first of November last, and on the day of his giving Mr. Solomon instructions respecting the will; and on the day of the execution of his said last will and testament in November aforesaid? (Objected to, as opinion.) A. I can speak of those days, as I remember them particularly. I had conversation with him on those days, and I remember his sight sometimes was dim, and on those occasions was good, for I saw him read on the day on which he had the draft of his will before him, the first part of November. I saw and heard him read from it. On the Sunday before he made his will, I remember particularly, he was well and his sight was good. I saw him write on that day (Sunday), and I remember the following morning when he gave me directions. He again remarked how well he saw that morning (about 9 o'clock). Then I saw him that morning, after the will had been executed, and he handed it to me, and had conversation with him. Then, in the evening of that day, he gave me directions with regard to the draft of the will that was written by Mr. Solomon; wanted me to make it a perfect copy by putting his name and the names of the witnesses. When I saw and had conversation with him that evening, he was, as usual, bright and smart in intellect. (Mr. Owen places paper "A," already proved and filed, in the hands of the witness, and asks him if that is the draft or copy made by Mr. Solomon, to which he had referred. Mr. Weatherbe objects, on the ground that there is no contention or dispute as to the identity of this paper, and it is now placed in the hands of the witness for the purpose of his giving testimony from the paper, which should be given without and not for the purpose of identification.) A. That is the paper to which I referred, to which Mr. Murdoch asked me to put his name, as he had executed it, and the names of the witnesses, which I did, as they appear on it. That was the morning of the day that it was engrossed by Mr. Solomon. Mr. Murdock asked me to bring up the draft, and I did so in the evening.

Q. Was Mr. Murdock of sound, disposing mind and memory, and capable of making a Will and of understanding the nature of the business in which he was engaged on the occasions referred to in November last. (Mr. Weatherbe objects on ground of question calling for opinion.) Judge admits the question.) A. Yes, I have not the slightest doubt of it, I would as soon doubt my own powers of disposing of my property as to doubt his powers of mind.

Q. Did you in any way, either directly or indirectly, attempt to influence Mr. Murdock with respect to the deposition of his property? A. I did not.

Q. Did you in any way, either directly or indirectly, influence Mr. Murdock with respect to the deposition of his property. A. I never did anything with such a motive, or caused or directed anything to be done with such a motive. Mr. Murdock's friendship with myself and family appeared to be altogether voluntary, there was no effort made by myself nor do I know of any effort having been made to get even the kind feelings or sympathies of Mr. Murdock toward us, but our house was open to him to come and go as he thought proper, and from his first coming there, appeared to be a mutual liking for each other's company and society. I knew of no person more highly entertaining and instructive than Mr. Murdock. I believe both myself and family received very valuable information from him. He took a deep interest in the children's education always. He always manifested a desire to help them, and did help them in their learning. The children generally would apply to him if they wanted any information in connection with their lessons, and that from the time he

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first came there up to his decease. Mr. Murdock gave me his gold watch, named in his last will. A day or two previous to my going to Ottawa he handed it to me and I put it on. I put it in my pocket in his presence and I took it with me.

Cross-examined by Mr. Weatherbe, Aug. 26th, 12.10, A. M.

I was acquainted with Mr. Murdock for 23 or 24 years, first became acquainted with him in Halifax. I never was in his house in Halifax that I remember. I think I have met him at social entertainments in Halifax, but I have no recollections where. I am not aware of being introduced to Murdock in Lunenburg. No introduction was required. Can't swear to what I don't remember anything about. If there had been a formal introduction I would have remembered it. 5550

Question.—Did you not sell the property, which Mr. Murdock purchased from you in 1872, to Mr. Murdock for about double what you paid for it shortly previous? (Mr. Owen objects that question is irrelevant and not pertinent to the issue.)

Judge admits the question.

Answer.—I purchased the property for something over nine hundred dollars on speculation. I informed Mr. Murdock what I purchased it for. I sold it to him within a year for sixteen hundred dollars; and about another year, after Mr. Murdock purchased it, he sold the property for cash, for the same money he paid me for it. He made no improvements to the house or premises. When I say none, I mean I say none. I swear that he did not spend a large amount of money on the property in repairs. I saw no repairs. 5560

Question.—Will you swear that property had not gone up a great deal in Lunenburg between the time he purchased it and sold it?

Answer.—I say that I knew and believed that real estate was going up and would increase in value, when I bought the property. Property went up very much from the time I purchased to the time he sold. But that was my price on the property from the time I purchased (\$1,600.) I had no other figure for the property. There was a day or two elapsed between the time that I named my price and the price I paid for it and the time he purchased it. I asked no price of any body but sixteen hundred dollars, and that's what Mr. Murdock gave me. When Mr. Murdock came back to Lunenburg the second time, it was about the last of August, I have no recollection of meeting him anywhere else, first when he came back, except at my house. He went to King's Hotel when he came back at this time. He lived there until he purchased the place. It may have been six or seven weeks or two months. I have seen him at King's Hotel probably during that period. Can't say positively. During the six weeks or two months that he lived at the hotel, I saw him nearly every day at my house. It's probable I went home with him at night to King's Hotel on several occasions. I'll swear that I never left my house with Mr. Murdock in liquor, anywhere. And I have no remembrance of going to King's Hotel with him when he was in liquor. I'll swear to nothing more than I've already sworn on that subject. I have not a very distinct recollection of my first interview with Mr. Murdock after his return from Halifax; but I remember the first conversation I had with him. He told me he had come back to make his permanent residence in Lunenburg. That he regretted he had left it, or been prevailed upon to leave, and gave me vaguely to understand why he left Halifax. He said the atmosphere of Mr. Beamish's house was not congenial. He may have said other things in that conversation, but I can't recollect anything else. I know that a short time after, or on that day it may have been, it was about that time he expressed a desire to come and live with us. I may have said that it was the same day in my direct examination. 5570

Question.—Have you a recollection that it was the same day?

Answer.—My impression was that he did speak about it on the same day, and he subsequently spoke about it again. 5580

Question.—State all that you recollect he said on any of those occasions?

Answer.—I've already stated the substance of what he did say on my examination, the words I can't give. But I remember my reasons expressed why I did not take him in the house. My reasons were that he had his set ways and probably might not conform to the rules and order of my house, and that I couldn't take him as a boarder because a person in my position should not take boarders or lodgers, because it was not my business, and I would not take any person in my house for pay. Besides that I told him that he was possessed of property, and it might be inferred if I took him in any other way,—it might be inferred that I took him purely for the purpose and with the motive of getting his property. 5590

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Mr. Murdock was not sick a great part of the time from September, 1874, to the time of his death. It is not possible that he could have been sick without my knowledge. He was not ailing a great deal. He was not complaining a considerable portion of the time. 5600

Question.—I want you to state all the periods Mr. Murdock was sick, suffering or complaining from ill health from the fall of 1874 up to the time of his death.

Answer.—The first recollection I have of any illness or complaining on the part of Mr. Murdock from the summer or autumn of 1874, he first complained when he was at King's hotel, after his return from Mr. Beamish's. He was sick while boarding there. It was in September or October, 1874. I don't think he was sick long, only a few days—a sudden illness, and lasted but a short time. I may not have been at home. I don't remember going to see him. I remember that he mentioned to me that he was sick at the hotel, and I have reason to believe that he was sick at the hotel. I very seldom was away more than a few days at any time. I don't know whether or not he had the doctor at that time. The next illness was a broken rib. I heard of no sickness or complaining of ill health between those times. He could not have been complaining or suffering or laid up between the time he was sick at the hotel and that of the broken rib without my knowing it. The Doctor may have been to see him during that period,—Dr. Jacobs was his Doctor from the time he came here. It is just possible that he may have come to see him as to his health. Doctor Jacobs was very intimate with Mr. Murdock, and frequently going to his house; but I do not believe he could be specially called in without my knowledge, but it is just possible he may have been. Mr. Murdock was laid up with the broken rib in February, about a week before I left for Ottawa. I can only state from letters from home, and from Mr. Murdock, how long he was sick on that occasion. I know Mr. Murdock wrote me about three weeks after I got to Ottawa, saying he was convalescent. I think he was sick about a month on this occasion. My impression is that he was not in bed more than four or five days. He may have been some weeks before I got the letter. There was no sickness to confine him to the house from the time I returned from Ottawa, in the Spring of 1875. In September he was suffering for a few days. Between the Spring of 1875 and September, if he had been sick I would have known it. I do not know that he was. 5610 5620

Question.—Was he not complaining of a great deal of ill-health during that period?

Answer.—No, on the contrary, he was always ready for any excursion or amusement. Generally speaking, during that period he maintained his cheerfulness and activity. About the last of September or 1st of October, after Beamish's visit, he was sick. (That is the period I referred to as to his being sick in September.) He was confined to the house for two or three days. 5630

Question.—Was he seriously ill on that occasion.

Answer.—No. But he gave us one reason, Charles Beamish's visit. He was complaining of being worried and annoyed by Charles Beamish's visit. He did not give Charles Beamish's visit as the reason for his sickness. He did not attribute his illness to any particular cause. It was nothing more than a little derangement of his system.

There was no serious illness of Mr. Murdock from that time until December, that I remember. About the end of October, Charles Beamish was down, and Stephen Beamish was down a few days afterwards, or before. After their leaving, Mr. Murdock complained of being worried by his relations. He complained of the annoyances these parties in Halifax caused him; and he was indisposed for a day or so. I can hardly call this an illness. I can't remember that he was confined to the house. I don't think he was confined to the house at this time. 5640

Question.—Was he confined to the house after the time referred to in your direct examination,—that he was confined for two or three days in September?

Answer.—The time I referred to in my direct examination, that he was confined in September, was the latter part of September, or the first part of October. It was subsequent to a visit by Charles Beamish. The next slight indisposition was after a visit by Charles Beamish and Stephen Beamish, which was about the end of October. He was not ill in November, nor confined to the house in November, the month the will was made. 5650

Question.—Was he confined to the house once or twice previous to the illness in September?

Answer.—I can't say that he was confined to the house on either occasion, either the last of September or the first of October,—or last of October or first of November illness. It was

not of sufficient importance for me to call it sickness. I mean by the word "invalided" in my direct examination, that he was not out or about as usual. I can't swear that he was necessarily confined to the house on those occasions. I know of no sickness that necessarily confined him to the house from the time I went to reside there with him (in July), until his December sickness.

Question.—Which was the most severe illness,—after the visit of the one Beamish, or that of the two Beamishes?

5660

Answer.—I can't make any comparison, as the indisposition was so slight. If he was ill at all in November, it was the first part of November. I am almost positive he was not sick after the 5th or 6th of November. I am quite positive of it. He was not indisposed more than a day or day and a half after the visit of the two Beamishes. I know he felt a great relief at their getting away from him. He got sick while Stephen Beamish was in Lunenburg. He complained while he was here, how he was worried with that man. It continued a day or so after he left. It appeared to be more from the insults and annoyances he sustained from their visits. He was not complaining more than two days after they left. There was no other illness till December. I cannot say Mr. Murdock was confined to the house from the time I went into his house down to December. And he had no serious illness during that time. His illness of December was serious. He was not seriously ill more than two or three days in December. He recovered as well as ever before Christmas. He was at the dinner table with us Christmas, and enjoyed himself. He was as well as ever after a week; and after that was as well as ever until I left. During the December illness he appeared to be insensible for four or five hours. There was general depression of body and mind for the time. The brain was affected as well as the body.

5670

I don't know that it was particularly the brain any more than any other part of the system.

Question.—Did your daughter write that paper marked No. 1, G. T. S., which I now put into your hands, and sign Beamish Murdock's name to it?

(Mr. Owen objects as being irrelevant and not pertinent to the issue and not evidence.)

5680

Answer.—Yes, I believe she did; it looks like her writing. She is one of the legatees under the last will. I'm not aware who conducted his correspondence for Mr. Murdock after his sight became impaired. He told me that my daughter Edna did—that is when he couldn't write, or did not feel disposed to do so.

Question.—On the 12th January, 1876, was Mr. Beamish Murdock, the deceased, recovering from paralysis of the brain?

Answer.—Mr. Beamish had recovered from paralysis of the brain before Christmas. He was up on Christmas day and took dinner with us.

Question.—Was Mr. Beamish Murdock, on the 13th January, mending from an attack of paralysis of the brain, as is stated in paper No. 1, G. T. S., now presented to you, written by your daughter?

5690

(Mr. Owen objects on grounds of irrelevance, and that the paper writing referred to is not evidence.)

Answer.—In the first place, I cannot swear that he was sick with paralysis of the brain. He was recovering before Christmas, and took dinner with us on that day, and was not sick or confined to his bed from that time up to the time I left. I have not the letter to which paper No. 1 is the reply. I don't know that there was a present accompanying the letter to which this is a reply. I don't remember of ever seeing the letter (paper No. 1, G. T. S., put in and filed subject to the objection).

Question.—Do you know of your daughter having written a letter for Mr. Murdock to Charles Beamish dated 29th November, 1875?

5700

Answer.—No, I do not; I know of no answer to that letter of November 29th. I don't know that I have any letters from Charles Beamish to Mr. Beamish Murdock after November 29th, 1875. I have not searched. I received some notices to produce and merely glanced over them. I cannot say that I have searched among the papers since I received the first notice to produce. I don't remember seeing any letters from Charles Beamish to deceased among his effects.

(Mr. Owen objects to any evidence with respect to any paper writing referred to dated November 29th, 1875, the same not having been proven; and also on the grounds of irrelevancy.)

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I believe that paper to be in my daughters hand-writing, the whole of it. I never wrote any letters myself for deceased, and I believe nobody else did but my daughter. I presume she wrote what she was told to write. But I say I never knew to whom she wrote, or the nature of the letters. I never enquired, and she never told me, and I never enquired.

(Paper No. 2, G. T. S., put in and filed.)

Mr. Owen objects, it not having been proven that said letter was written by Mr. Murdock's directions and forwarded to Mr. Beamish; and, also on the grounds of irrelevancy.

Question.—In the face of this letter written in your daughters hand-writing, while Beamish Murdock was blind in your house, stating that on the departure of Stephen Beamish, which you, yourself, have proven to be the last of October or first of November, he was taken with a deadly fit of illness, worse than he had ever felt in all his life, from which he described himself, by your daughter's hand, as slowly and gradually recovering on the 29th November. I ask you whether he was not laboring under that deadly fit of illness on the 15th November, when the will was executed?

Mr. Owen objects to the question, being a trap question, witness not having stated Mr. Murdock was at any portion of the time referred to laboring under a deadly fit of illness; and also on the ground that the letter referred to is not legally in evidence; and also on the ground that witness has not stated that Mr. Murdock was blind during the month of November; but on the other hand, that his sight was particularly good at and about the time of the execution of the will, on 15th November.

Answer.—I state that he was not laboring under a deadly fit of illness in November; that the temporary sickness or indisposition at the time of Stephen Beamish's leaving Lunenburg lasted about two days, and that from the time Mr. Murdock placed a draft of a will for me to copy, about the first part of November, up to and beyond the time of the execution of his will on the 15th of November; that he was perfectly well in mind and body, and that during that time he was at Bridgewater with me. About ten days elapsed between the time of his giving me the draft to copy and the execution of the will. He was not sick at the end of August.

Question.—Was he as well at the time he gave you the draft of will to copy, as he was at the end of August?

Answer.—I can make no comparison between August and November, only that he was well during that time, except at the periods I have mentioned. He was well at the end of August. I don't know whether I was home the beginning of May, or whether I had then returned from Ottawa. Mr. Murdock was at my house to receive me when I returned from Ottawa. Papers from No. 3 to No. 14 inclusive, are in Mr. Murdock's hand-writing, and signed by him. (These papers are now tendered in evidence.)

Mr. Owen objects, on the ground of irrelevancy, remoteness and not evidence or properly proven; and also on the ground that, if evidence, they formed a part of petitioner's original case, and cannot now be tendered or received in evidence.

The Judge admits the letters in evidence.

Mr. Murdock was in the house where he died, on the 30th of December, 1874. He was not suffering so that he could not write on the 30th December, 1874. I never said Mr. Murdock abused Charles Beamish's family; but that they abused him in the manner stated in my evidence. Mr. Murdock's memory was always very good.

Question.—Was Beamish so weak on the 24th of June, 1875, that he could hardly walk?

Answer.—My impression is that about that time he went with me to New Ross, and was not feeble or sick.

Question.—Was he very weak on 24th June, 1875, from sickness and injuries, that he had to bear from September previous?

Mr. Owen objects, on the grounds that it is a trap question, and also on the ground of witness not being an expert or physician.

Answer.—I am not aware that he was sick in September, 1874, previous, and therefore can't say whether he was suffering from any sickness. I saw a good deal of him in June; he was very industrious in his garden in June, and in my garden, and that he went to New Ross with me about 24th June, when he did not show any indications of weakness. I know of no

sickness in August. I believe he was quite well at the end of August. I don't remember his being sick the end of August. He was not confined to the house.

Question.—Was the deceased much impaired in bodily strength when he made the third will of 27th August?

Answer.—I'd say no.

Question.—Was he as well when he made the fourth will on the 15th November as when he made the third will? 5770

Answer.—I can make no comparison between 27th August and 15th August; but I say he was very well and strong when he made the will on 15th November; mind clear. When I went away to Ottawa in winter of 1875, I left Mr. Murdock in bed with his rib broken. I'm not aware there was a party at my house the night Mr. Murdock broke his rib. I won't swear positively I found out the next day after he broke his rib. But I say he could not have been invalided a day when I was home without my knowing. He did not tell me the secret of how he broke his rib until about six months after he broke it.

Question.—When you first went to see him after he broke his rib, did you ask him how he broke it? 5780

Answer.—I cannot swear that I asked him. I mean to say that I might have gone up to Mr. Murdock's bed in January without asking him how he broke his rib. I may have asked the doctor or nurse, or somebody else. I don't remember asking anybody, but its likely I did make inquiries of some one.

Question.—Did you ever get any information from any source whatever, as to the cause of Mr. Murdock breaking his ribs, from January down to July, when he gave it to you as a secret, and if so, what impression was left on your mind?

Mr. Owen objects, on the ground that it is asking for hearsay evidence, and that its calling for impressions of the witness.

Judge rules question out. 5790

I have no recollection of any information from Mr. Murdock, except at the time alluded to. It astonished me very much what Mrs. Peck said in her evidence with regard to it. The old man told me that he was in the act of taking off his trousers, and she stumbled against him. I don't know whether there was any lamp or not. He did not tell me she did it on purpose. I remember that from the way he communicated it to me, that I inferred Mrs. Peck was drunk when she stumbled against him. He referred to the quantity of liquor used by Mrs. Peck. He spoke at that time of making some change in the government of his house; that he found that there was too much money spent. (He told me this at the very time he spoke of her stumbling against him.)

That he discovered that money he gave her to purchase things for the house was not appropriated in that way, and that he had reason to believe the articles came from my house. He spoke about Miss Peck coming there for a refuge for some two or three weeks until she— 5800

Mr. Weatherbe objects to witness going into what he did not ask him.

I think that the claim of Mrs. Metzler for liquors against Murdock covered from May to July inclusive, but am not positive. I transacted that business for him. I don't know of any other item but liquor in Mrs. Metzler's bill. Mr. Murdock put the matter in my hands as a friend, and I acted as his attorney in that matter. He paid me no costs. Mr. James Johnston, Q. C., assisted me as counsel in this matter on the trial in Court, owing to my being obliged to give evidence. I don't think he had a fee. Mr. Johnston was staying with my family in Mr. Murdock's house.

Question.—What room did Mr. Johnston occupy in the house? 5810

Objected to as irrelevant.

Answer.—He slept up stairs, what part I don't know; don't remember being up there then. There is a bedroom at the north gable end, and the other is one open room.

Question.—How many rooms are there up stairs?

Answer.—I mentioned what rooms there were up stairs; I would call them two rooms.

Question.—Is there any more room up stairs, than as described in Mr. Murdock's letter of 10th January, 1875, in which he says, "There is a large room for Mrs. Peck, and space enough to hold all trunks."

Answer.—There is a room double bedded, plastered at the north end up stairs, outside of

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that, by the chimney, there is a space for trunks; then outside of that, the larger portion of the up stairs is an open space, which I call a room, in which there are beds. Both places are used as bed rooms. Probably Mr. Murdock did consult Mr. Johnston with regard to the suit, Metzler against Murdock; I believe he did have conversation with him about it. The claim in that suit was, I believe, entirely for liquor alleged to be sold by Mrs. Metzler to Mr. Murdock. Mrs. Metzler kept a tavern at the time. Mr. Murdock did not admit that he had got thirty dollars worth of liquor; he said that it was enormous, but paid thirty dollars in full. 5820

Question.—Did Mr. Murdock not take from Mrs. Metzler a receipt for thirty dollars on account?

(Mr. Owen objects on grounds of irrelevance and also of its being put for other purposes than in connection with this suit.) 5830

Judge admits the evidence.

Answer.—Let me explain. I saw Mr. Murdock on the day that he said he went to pay that bill, going to Mrs. Metzler's. It was a bill for thirty dollars, made out for thirty dollars; he had it in his hand, (this was after I went to live at the house). A day or two afterwards a bill came to his house for \$54.60. He was surprised,—said it was a mistake, that he had just paid his bill. He then went for the receipt and found it was a receipt on account. He was annoyed, and said he had paid all that was demanded of him; that he considered it excessive, but passed it over. He also said that when he paid Mrs. Metzler he reminded her of one or two bottles got subsequent to the bill, and asked her, at her leisure, to just let him know what it was; and that was all he owed he said for those one or two bottles. He said at once he would not pay it, it was a piece of imposition and wrong. I think I told him that he ought to have looked at the receipt he got, and he said he should have done so, but he considered that it was all right. I remember he attributed it at the time that probably it was a made up thing between Mrs. Peck and Mrs. Metzler. 5840

Question.—You have evaded answering the question I put to you by referring to matters not at all suggested by any question. I ask you was the receipt on account for thirty dollars?

Answer.—I answered it in my answer to the last question, when I said Mr. Murdock found it so.

Question.—Did you, as his attorney in that affair, find it so, and was it so?

Answer.—Mr. Murdock found it so, and handed it to me and I saw it was so. 5850

Question.—Did you swear on that trial that you had supplied Mr. Murdock with two gallons of whiskey a week, or words to that effect?

Answer.—No; I could not have sworn that. I explained fully in my direct examination all with regard to it. That Mr. Murdock or in his name received about two gallons of liquor every week or ten days, from about May to nearly the end of July, 1875. That Mrs. Peck, to my knowledge and belief, carried the best portion of the liquor up to the house herself.

Question.—Have you in your last answer stated what your evidence was on the trial of suit Metzler vs. Murdock?

Answer.—No; I did not give the exact words of my evidence on the trial, for I could not remember what my words were, but I fully remember the facts and circumstances of the case. 5860

Question.—I ask you if what Mr. George A. Ross swore that you gave evidence to in that trial, which I now read to you, is true?

Answer.—I cannot swear it is true, as I do not remember particularly exactly what I did swear, but as I said on my direct examination Mr. Ross's evidence on that point is not inconsistent with the facts.

Question.—I read you these words from Mr. Joseph Creighton's testimony of your evidence on that trial: "Mr. Kaulback in his statement said that he had been supplying Mr. Murdock with a couple of gallons of liquor every week,"—is that substantially true?

Answer.—No; I say that that is only a portion of Mr. Creighton's testimony, and is not consistent with the facts of the liquor supplied, and therefore I could not have said it. 5870

Question.—I read you these words from Mr. Thomas Curll's testimony of your evidence on that trial: "I heard Mr. Kaulback say in his evidence that he supplied Mr. Murdock with a couple of gallons of whiskey weekly;" and I ask you if that part of his evidence is substantially true?

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Answer.—Mr. Curll's evidence on that point is at variance with the evidence given by Mr. Ross, who deposed as to what I said; and as I already said Mr. Curll's evidence is not consistent with the facts, whilst Mr. Ross's can be reconciled.

Question.—I ask you again if that part of Mr. Curll's testimony is true or not?

Answer.—I already stated that it is not consistent with Mr. Ross's or with my evidence, nor with the facts and circumstances of the giving of the liquor, and therefore, so far, is incorrect. 5880

Question.—I now read you these words from Mr. Ross's testimony of your evidence on that trial. "He said that he had been in the habit of supplying Mr. Murdock with about a couple of gallons of whiskey I think, on an average per week," and I ask you is that part of his evidence true?

Answer.—I would like to know whether this question is seeking an answer as to the fact of how much liquor was supplied, or whether it refers to the exact words of the statement made by me on the trial referred to.

Question.—I ask you again, is that part of Mr. Ross's evidence of what you said on that trial substantially true?

Answer.—I've already said I do not remember what my evidence was on that trial, but I don't doubt the evidence of Mr. Ross on that point, as its reconcilable with the facts of the giving of the liquor. 5890

Question.—Did you not say in your evidence on that trial, that you supplied Mr. Murdock with a couple of gallons of liquor weekly, or words to that effect?

Answer.—I've already said I do not remember what my evidence was on that trial, but I could not have said that I supplied him weekly with two gallons of liquor, as such would not be consistent with the facts.

Question.—Did you not on that trial swear substantially that you had been supplying Mr. Murdock with a couple of gallons of liquor every week, or with about a couple of gallons on an average per week, or words actually or substantially conveying that meaning. I want a direct answer? 5900

Answer.—I would like to swear yes or no, but I can't, as I do not know what I swore to, but I may have sworn in substance to what is asked in this question, as is reconcilable with the facts. I may have told Mr. Charles Beamish substantially that I supplied him with about a couple of gallons of liquor weekly.

Question.—In supplying this liquor to the old gentleman, did you do it gratuitously and voluntarily, without being asked for it?

Answer.—No. I had an arrangement with him about the supply of it, before the supplying, but not with regard to the quantity. I can't remember when the arrangement was made. The inducement for him was that the liquor was better than what he could ordinarily have got in the way of small supplies. It is possible that as good might have been procured in Halifax. Don't remember what it cost. I never saw any as good in Halifax in my opinion. I got it through the Honorable Frank Smith, of Toronto. I did not measure it. I generally went to the wine cellar when liquor was taken out of it. The jug was always filled, it was a two gallon jug, that is my impression. I won't swear it held exactly two gallons. I filled it sometimes, and sometimes my servant, who is dead, filled it. Can't say how often. I can't say positively that my servant girls ever filled it. I would not like to swear I filled it four times; I may have. I won't swear to any number of times that my servant who is dead filled it. I can't name any particular servant, with exception of my dead servant, who filled the jug on any particular occasion. The man (my servant) who was burnt to death at my fire, was with me all the time during which the liquor was supplied. I could not have said on the trial of Metzler vs. Murdock that I had delivered the liquor on every occasion except once. I'll explain I saw that the liquor was filled in the jug, and I do not remember seeing who took it away from my house except Mrs. Peck. I swear that Mrs. Peck took that jug from my house to Mr. Murdock's, and others have seen her do so, I believe. 5910

Question.—What others?

Answer.—Well, I believe my son saw her take the jug from my house in July, when I remonstrated with her, and I complained of the quantity of liquor going up to the house. I think the jug was filled before she came for it. I don't know who filled it on that occasion, but I always or generally went to the wine cellar myself. 5920

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Question.—How long after you remonstrated about the quantity of liquor taken did you continue to supply it? 5930

Answer.—Well, I remonstrated after two or three jugs had been supplied to Mrs. Peck, and I remonstrated to her all the time. I also remonstrated to Mr. Murdock; I remonstrated to Mrs. Peck mostly at my own house. I don't remember who was present when I remonstrated, except, that I think, my son Charles was present on one occasion. Every time I saw Mrs. Peck take the jug away I remonstrated.

Question.—How many times did you see her take the jug away?

Answer.—About four or five times, I am sure, probably oftener. If I am not mistaken, I think there was a mark kept in the wine cellar in order to recoup myself from a cask which I was to order and did order, and which arrived a day or two before the fire, but was not tapped. I did not order the cask which arrived before the fire, as referred to, was not ordered for Mr. Murdock but on our joint account, and I was to take from it what liquor Mr. Murdock had borrowed. It came from Toronto in the packet or steamer. The cask contained, I should judge, about forty gallons; I may be wrong. I do not know whether it was entered here in the Custom House. It came in the proper way; I ordered direct from Toronto. I presume the invoice was to me. I did not mean to say in my direct examination that I arranged after I went to live with Mr. Murdock that I was to repay myself for this liquor out of a cask I was to order for Mr. Murdock. 5940

Question.—Did you say, on your direct examination, that after you went to live with Murdock you arranged with him in return for the liquor supplied by you, a cask was to be procured at his cost for the house, or words to that effect? 5950

Answer.—No. What I remember is this: That in arranging with him as to the costs and expenses of housekeeping, about a week after my family went to live with him, that he referred to the liquors he had got from me and at my house, and would not consent to my supplying the liquor for the house, and we compromised or came to an understanding, I consenting that he should get a cask of whiskey, or I get it for him at his cost, I supplying all other liquors.

Question.—What arrangement did you make with Mr. Murdock previous to May to supply him with liquor after that?

(Mr. Owen objects on the ground that witness has not previously stated there was such an arrangement made previous to May.)

(Mr. Weatherbe moves the Court to prevent Mr. Owen suggesting to the witness.) 5960

Question.—Did you state that the period during which you supplied Murdock with liquor comprised May, June and July inclusive.

Answer.—If I said the whole of July it was a mistake, and if my answer would include the whole of May it may be a mistake, as I do not know that I commenced supplying him the first of May, as I may not have been at home at that time.

Question.—In the trial of Metzler vs. Murdock, what period did your evidence of the supply comprise?

Answer.—From after my return home until the time of my being burnt out in July. It could not have included the cask which was procured by me for Mr. Murdock after the fire.

Question.—Why did you give evidence of the cask of liquor on the trial? 5970

Answer.—I can't swear that I gave any evidence with regard to the cask. I may have done it, but I don't remember. If I did make any reference to a cask it was not the cask obtained subsequently to the fire, but it had reference to the cask that came to my house previous to the fire from which I was to recoup.

Question.—Was your evidence of the liquor supplied given on that trial for the purpose of showing the quantity supplied by you was so large as to raise a presumption that deceased did not require the supply sued for?

Mr. Owen objects on the grounds of irrelevance, and asking for purposes or reasons and not facts.

Judge admits the evidence.

Answer.—Partly so. And the reference to the cash from which I was to recoup was to show that I was not selling liquor to Mr. Murdock, but as is usually done among friends, getting a cask that was to be divided between them, and more than that—I'd say that it generally took two months from the time I ordered a cask to the time I got it. At the time I ordered it, I had 5980

no reason to think that there would be so large a quantity to be deducted from myself on account of the liquor supplied Mr. Murdock. I can't say exactly the time I came back from Ottawa in 1875. It may have been the last of April or first of May. It may have been the middle of April or middle of May. I generally left about the date the House prorogued, sometimes a day before or a day after. Mr. Murdock may have got some liquor from me previous to my going to Ottawa, but he was not supplied in the way he was afterwards. I remember his getting a small jug two or three quarts, twice I think, before I went to Ottawa. He may have got more, I don't know whether or not he paid for it. I don't remember whether Mr. Murdock was charged in an account for which he gave a note, with liquor, which he got before the fire. There was a memorandum made between us in my office after the fire, in which a cask of liquor was charged which was a part of the consideration for which he then gave me a note of hand. That was the cask procured for Mr. Murdock by his order after the fire.

5990

Question.—Did Mr. Murdock, or did he not, previous to the burning of your house, which was the 29th July, 1875, sign a note of hand to you, the consideration of which was in any part made up of a charge or charges for liquor or liquors of any kind?

Answer.—Yes, I think he did. I cannot give you the date of the note. I have the notes at the office I think. They ought to be in my safe. I can't give the date of the note without going to my office.

6000

Question.—Have you the note in your possession, to the best of your knowledge?

Answer.—I don't know. I may have, or it may be incorporated in some new note. There was a new note given after the fire, which I believe included a cask of Rye and a basket of Champagne, which were gotten after the fire. It was ordered after the fire. I cannot say there was any note before the fire including liquors. There may have been one including a basket of Champagne before the fire; there may have been one, there may have been two, but I don't remember. I am unable to say how many notes of his I have in my possession. I may be able to produce them to-morrow morning. They are in my safe, the notes I hold against him. I went to my office for Mr. Owen for papers during my direct examination.

6010

(Mr. Weatherbe requests the Judge to permit the witness to go to his office for the notes of hand signed by Mr. Murdock.) He admits there is no notice to produce.

(Mr. Owen objects, as Proctor of Legatees objects to Mr. Kaulback going to his office for the notes referred to, there having been no notice to produce the same; and also on the ground that said notes, if any, are not pertinent to the issue.)

The Judge permits witness to go, but will not direct him to do so.

Question.—Did you not just now state on the stand, that you would not be bound to produce those papers under a subpoena *duces tecum*?

Answer.—No, I did not.

6020

Question.—Did you not use the words "even then I would not be bound to do so," referring to a subpoena *duces tecum*, being served on you?

Mr. Owen objects on grounds of irrelevances.

Mr. Weatherbe withdraws the question.

Question.—How many casks of liquor did you procure, or provide, or obtain for Mr. Murdock, or in which he was to have a share?

Answer.—Two; one after the fire and one previous to the fire; probably in the month of May or June, from which I was to recoup. I did not send for one that never came or came after his death. I did not order any at Scott's, in Halifax, when I was on my way to Ottawa. I think I have the note which includes the liquor got after the fire. I cannot give the amount.

6030

Question.—Can you inform the Court in the morning of the amount?

Answer.—I don't know in which note it is included (service of notice to produce marked No. 15, G. T. S., proved and filed). I have no accounts of anything previous to the fire. I have no memoranda of accounts subsequently to the fire of Mr. Murdock's. There is an one subsequent to the fire which I believe to contain the cask of rye whiskey, which I got by his orders, and a basket of champagne. Probably you got the information from Mr. Ross, who was serving in my office at the time.

Mr. Weatherbe objects to this evidence as evading the question.

Question.—I have not asked you for the information you are now giving, as you must well

know that I am asking you to produce a memorandum or account made by you of charges against the deceased, including rye whiskey, for which you took a promissory note from the deceased after the fire, and for which you have been served with a notice to produce on the 9th day of August last; will you now be kind enough to produce those papers? 6040

Mr. Owen objects on the grounds that Mr. Kaulback has already stated that he has no accounts of anything previous to the fire and no memoranda of accounts subsequently to the fire of Mr. Murdock's, and also that it is a trap question, as witness has already stated that there was not a note taken after the fire for liquors furnished previously thereto.

Answer.—I'd say that its impossible to understand what Mr. Weatherbe wants. That I have over and over again told him and repeated it that I have no accounts or papers relative to rye whiskey or any liquors since the fire. That the note of hand which includes the whiskey and champagne was made up in my office on a piece of paper, simply setting down the article and the price, and no accounts were kept. 6050

Question.—I put in your hand the notice to produce and ask you if your answer applies to the third paragraph of that notice?

Mr. Owen objects on the ground that it is a trap question, as witness has already stated that there were not any accounts or entries of rye whiskey or other liquors either previously to or subsequently to the fire.

Answer.—This third paragraph of the notice to produce asks for original entries of whiskey or other liquor in the lifetime of deceased from the month of April, 1875, and particularly a memoranda made by myself in August or September last, including liquors for which I took a note of hand; and I say as I said before that up to the time of my fire all papers and accounts and memoranda with Mr. Murdock or anybody else were destroyed, and that I did not know of any papers or accounts previous which contained any charge for liquor against Mr. Murdock. That subsequent to the fire I have half a dozen times replied by telling Mr. Weatherbe that I have no accounts and never made an account against Mr. Murdock containing liquor. That I believe I hold a note of hand which includes the price of a cask of rye and perhaps a basket of champagne, made about August or September last, but that no account was made out. Mr. Murdock came to my office, and in the presence of Mr. Ross, then serving in my office, I believe signed a note, the amount being for a cask of whiskey and perhaps a basket of champagne. It may be some few other articles and cash paid out for Mr. Murdock. The articles and the prices were simply enumerated on a piece of paper, Mr. Murdock assenting to their being correct. Mr. Ross, I think, looked over the addition, and witnessing the note. I'm not sure he witnessed the note, but I think he did. 6060

Question.—What became of that memorandum; you've failed to inform us on the most important point, in fact the only point?

Answer.—I say again that I did answer this last question repeatedly. I was asked this question this morning, and this afternoon I told Mr. Weatherbe it was destroyed.

Question.—Mr. Kaulback, on the contrary; I've been more than an hour endeavoring to find out from you, and you haven't told me yet who destroyed it, and when it was destroyed.

Mr. Owen objects to the form of question, on the ground that Mr. Weatherbe has not recently asked the witness, before putting this last question, as to who destroyed the memorandum referred to. 6080

Answer.—It was destroyed then and there. I can't remember who tore it up; but it was not a paper made or intended to be kept. I believe it was in pencil. I swear it was not folded up by me and put away, and afterwards examined by me. I know this, that I believe there were some vouchers, (I think the bill of the rye and some other accounts or vouchers for money paid), which were taken away by Mr. Murdock. I can give you no idea as to the amount of that note. I have some under a hundred and some over a hundred. I can't say whether it was nearer one hundred than eight hundred, because I have several notes of hand, taken at different times, from Mr. Murdock. The full amount of them is, I think, about a thousand dollars. They were for accounts paid, monies advanced; possibly it may be for some real estate which he last bought, and for which, I think, he did not pay in full. I cannot recollect how those notes were made up at all now. I have too many notes of hand to remember any particular note. I have a general idea of what the notes were for, but cannot particularize at present. 6090

Question.—Will you be good enough to give us that general idea?

Answer.—The notes of hand contain (some of them for repairs to his buildings, monies lent, bills, paid it may be for balance on real estate, or it may be for the whole estate in which he lived at his decease; the cask of rye whiskey. I don't know whether or not I charged the cask of rye whiskey to Mr. Murdock which was destroyed by my fire. I don't think it was ever settled. My impression is, that when he made me send for a cask of liquor at his house, that I did not make any charge for what he got from the month of April to the month of July. I did not state on my oath in the cause, "*Metzler vs. Murdock*," that I sold Mr. Murdock the two gallons a week. I never sold him any liquor. I did not swear on that trial that I sold Murdock the liquor which was then referred to, or any part of it. I have no knowledge of having in any way charged Mr. Murdock with any part of the cask of whiskey referred to at that trial. Mr. Murdock took up notes and gave me others several times, from the time he came to Lunenburg.

Question.—Did you preserve any of his notes from the fire?

Answer.—I think all Mr. Murdock's notes were saved.

Question.—Did Mr. Murdock's notes escape unscorched and unscathed from the fire?

Answer.—I cannot answer you. Some notes of his were saved from the fire. From the way the notes came out of my safe, and opened by my student, Mr. Ross, and others, it is impossible for me to say whether all my notes were saved. I had no memoranda of my notes of hand to refer to, and therefore cannot say whether all the notes I had against Mr. Murdock were saved; but what were saved were partially defaced or damaged from the effects of the fire and water.

Question.—Now, Mr. Kaulback, I ask you if any of those notes you held of the deceased Murdock are scorched or defaced, or injured by the fire or water, and as you can produce them from your office immediately, I again beg of you to produce them now, as you have the Judge's permission, and exhibit them in Court.

Mr. Owen objects to the question and requests, on the grounds of irrelevance, and that no notice to produce has been served.

Judge admits the question.

Answer.—I state that the notes I now hold from Mr. Murdock. I cannot from memory say if any of them are from before the fire or not. If any of them are from before the fire, they will have traces more or less of damage, as I do not remember of any notes coming out of my safe after the fire that had not been slightly damaged, whilst many were entirely destroyed and the writing entirely obliterated.

Question.—Do you decline to produce the notes, now that you have the Judge's permission?

Answer.—I say I have not the slightest reason or motive for not producing those notes, but I do not consider that (Mr. Weatherbe) from his conduct and gestures, is entitled to any favor from me other than what the law requires.

Question.—I very politely ask you to do yourself the favor of producing them now that you have the Judges' permission, and I apologize for any gesture that offended you, as it was perfectly unintentional.

Answer.—I refer the request to my Counsel, having no objection, to go, and leave him to decide, as Mr. Weatherbe has withdrawn his ungentlemanly remarks and apologized.

Question.—I ask you, on your oath, whether you complained of any ungentlemanly remarks of mine, or if I apologized for any.

The Judge rules question out.

Question.—I ask you again, will you produce the notes?

Answer.—In consequence of Mr. Weatherbe's retractions, I do not feel disposed to do so, except by direction of my Counsel.

Question.—Do you say that that paper marked "No. 1 G. T. S. was delivered to you by Mr. Murdock previous to the fire, handed back by you to him shortly before the fire, and returned to you by him after the fire?

Answer.—This paper was handed to me by Mr. Murdock before the fire. Mr. Murdock requested me to give it to him to copy it, as I understood, shortly before the fire, and my impression is that I got it again after the fire. I am at a loss to know from whom.

Question.—Have you not stated that he returned it to you shortly after the fire, and stated to you that he had copied?

Answer.—My impression is, that he told me he copied it. I have a slight remembrance of his handing it to me a short time after the fire, can't say how long, very short time; but I remember its being in my possession after the fire. 6150

Question.—With what object did Mr. Murdock hand you that paper, No. 1, G. T. S., in July.

Answer.—Mr. Murdock shortly after he gave me his will, made in New Ross, told me he'd make out for my information a list of his mortgages and securities in Halifax, I having a full knowledge of his monies due him here in Lunenburg. I do not remember him telling me, but my inference was that probably I was named in the will in some way, by which this information might be serviceable. That he sometime after gave it to me.

Question.—Did you not find it among his papers after his death?

Answer.—No; I am positive I did not. 6160

Question.—Did not Mr. Beamish manage all his (Mr. Murdock's) affairs at that time and afterwards.

Answer.—I know of no affairs Mr. Beamish managed except collecting of rents, and sending or bringing the same down to him.

Question.—Did Mr. Murdock entrust you with the management of any of his affairs, or seek your advice therein from July downward.

Answer.—Yes.

Question.—To what extent?

Answer.—To the extent of requesting that I take the same charge that Mr. Beamish had at the time. He desired to give me a power of Attorney to act and to cancel the powers which Mr. Beamish held. And he further said if I persisted and declined that, he'd request Mr. Owen, my co-executor to do so. 6170

Question.—At what time was this?

Answer.—Immediately after the execution of his will in November.

Question.—When he put that paper (No. 1, G. T. S.) in your hands, he did not entrust you, you say, with the management of his affairs?

Answer.—No; I have not said so. Immediately after my coming to his house he desired me to take charge of his matters, and complained of Mr. Beamish exercising an improper control as to monies, and the monies sent him, and thought it right that I should take his affairs in hand, but he didn't press it with the same determination as he did immediately after and continuously after the execution of the will of November. I have never known Mr. Murdock to employ any of the Mr. Owens as an Attorney. I don't believe that any of them had in his life time, or have now, any charge against Mr. Murdock for professional services. I don't think Mr. Murdock had occasion to consult any person. Mr. Murdock was lawyer enough to look after his own business. I think he would have been fully qualified to have conducted that case in court in October last, but he was the principal witness in it, and so did not. 6180

Question.—Did you volunteer to manage that case for him?

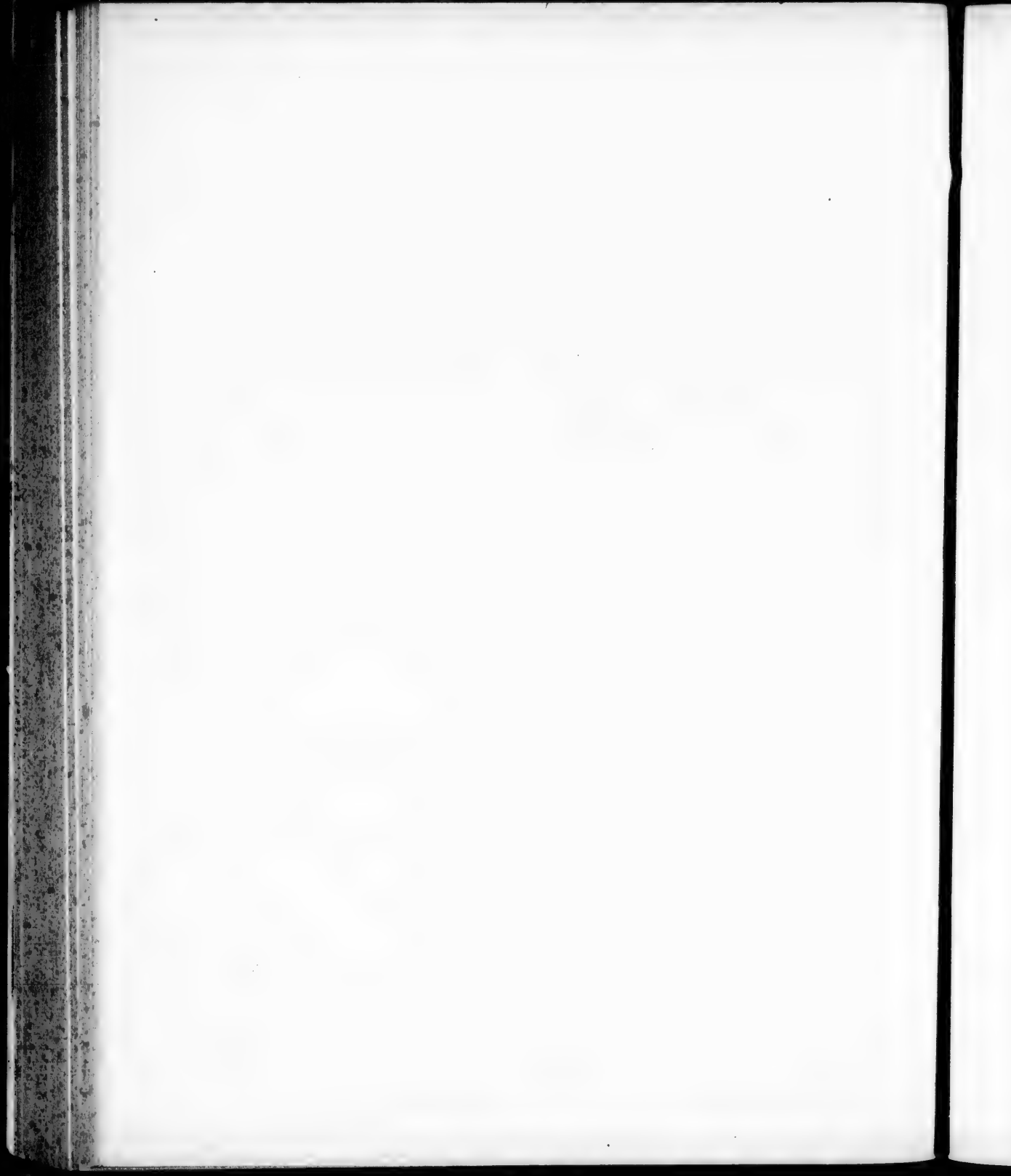
Answer.—No. I have already stated with respect to that bill. The presentation to Mr. Murdock, and what he told me. They might be considered in the nature of instructions. He said to me, to take this matter in hand, and do what's right in the matter. I talked to him several times about it, and he acquiesced in putting in the pleas. I did not have to persuade him to put in the pleas. Probably, he suggested the pleas. I cannot speak positively as to whether pleas would have been put in, if it had not been for me, but I think there would have been. 6190

Question.—Did not Mr. Murdock say to Mr. Myrer, when he went to collect that bill, "Whatever the Senator says, I'll agree to?"

Answer.—He handed it over to me, and said it was all in my hands, my last answer is consistent with that.

Question.—I read to you from Mr. Myrer's evidence, "Mr. Murdock said he did not know about the order." I asked the old man to pay it. Mr. Murdock looked at the Senator, and said, "Whatever the Senator says, I'll do?" 6200

Answer.—I don't believe he made use of these words. I could not have addressed Mr. Murdock in these words, "You're an old childish man," because it would not have been true.



Question.—You say you could not have used the words. I ask you, did you use the words?

Answer.—I did not use the words. I did not, in the presence of Mrs. Peck and Miss Peck, say that Mr. Murdock was childish, wasn't able to attend to his own business, that any one could cheat him if they liked, nor did I make either of these assertions. It is impossible that I could have talked to them in that style. I could not have said anything to them of that effect. Besides I do not remember having any communication with Mrs. Peck, or Miss Peck, after I went to the house. I never said this, and have forgotten it.

Question.—You heard Mrs. Peck's evidence with regard to your coming into Mr. Murdock's, breaking the seal of a letter, and opening it, reading it, and destroying it, is there any truth in that statement whatever? 6210

Answer.—None whatever. That statement is purely and entirely fabricated.

Question.—I'll read to you from Mr. Beamish's evidence as to what you said to him:—"He replied, I don't know what he does with it, (referring to his money), but I'm obliged to keep people away from the house, from coming to see Mr. Murdock, he would lend his money or give it away." Is there any truth in that?

Answer.—I may have said to Mr. Beamish that "I did not know what Mr. Murdock did with his money," but I could not have said what is further stated that I said, as I never did endeavour to keep any person away from him, and the facts would not justify me saying what is contained in the rest of the question. I never said anything from which that inference could be drawn. 6220

Question.—Did you tell Mr. Murdock, previous to going to live with him, when he invited you to live with him, that you could not live in the house with Mrs. Peck, or any words to that effect?

Answer.—I cannot remember having said those words to him, or words to a like effect, but I will not swear I did not, as I knew well that Mrs. Kaulback would not tolerate the conduct and habits of Mrs. Peck. I don't remember that I stated in my direct examination that when Mr. Murdock invited us to live with him, I knew Mrs. Kaulback would not tolerate Mrs. Peck, whether its these or not, it's correct.

Question.—You stated in your direct examination that "Mr. Murdock was very friendly to you, and would do as much for you as your father would," what did you mean? 6230

Answer.—I think that his esteem and friendship for me was so very great that I could make no other comparison. Before I went into Mr. Murdock's house to live (it may have been a month or more previous) I knew of the letter to Miss Crowe which Mrs. Peck destroyed. I knew it when she destroyed it. It was knowledge which I regretted very much possessing. I don't know where Miss Crowe was living then. I think the letter was addressed to Chester. I'm not prepared to speak as regards the substance of the letter—it was a short note, and I merely glanced over it. It appeared to be something very formal, whatever it was.

Question.—Was it not a recision of a promise or contract to marry Miss Crowe?

Mr. Owen objects to the question as irrelevant, and no notice to produce letter referred to. 6240

Answer.—No. I cannot say it was. I did not pay sufficient attention to the contents of the note, to be able to say what was the substance of it. I have a vague notion that it was acknowledging some message sent to him through some other person. I don't believe love or matrimony had anything to do with it—it only contained four or five lines. That's the nearest I can come to it.

Question.—Did you ever, during the life time of Mr. Murdock; communicate to him the fact of your having looked over the letter.

Mr. Owen objects, on ground of irrelevancy and not evidence.

Answer.—I can't call to mind that I ever did, but I certainly did not give the slightest hint or intimation to Mrs. Peck or anybody else, previous to the dismissal of Mrs. Peck. 6250

Question.—How many times were you present when Mrs. Peck and Mr. Murdock had any communication with each other on the subject of that letter?

Answer.—On two different occasions that I remember. One occasion, (the first), was just about three days before she left the house, and then the following day. We were in the house about a week or ten days while Mrs. Peck was there. It was in the kitchen I glanced over the

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letter. I was under the impression that Mrs. Peck could not read writing. That's my general impression. I certainly did not burn that letter. I saw her tear it up, and throw it in the cooking stove herself. I did not say the letter was childish.

Question.—Were you in the habit of bringing liquor to Mr. Murdock's house after night in a jug on your back. 6260

Answer.—No. I never did. I never took any liquor to Mr. Murdock's house, except as stated in my direct examination. I never saw the little jug after the fire.

Question.—Did you ever see that little jug after you took it up to Mr. Murdock's?

Answer.—Yes. I think I saw it at my house afterwards, very near up to the time of my fire. I think it was burnt in my fire.

Question.—Did you say it was the smallest jug you ever saw in your life?

Answer.—I don't remember that I said it was the smallest jug I ever saw in my life, but I think it was of that style. I think it was half-a-gallon or three quart jug. I never saw a quart jug of that shape. I have seen jugs with a handle, quart jugs. I have never seen a smaller jug than that one of that shape, with a handle to it, but I've seen smaller jugs with a handle to them, but not that shape. I remember filling once, and giving it to Mr. Murdock, and I think I filled it another time. I did not give Mr. Murdock that liquor. I don't think there was any charge made for it. I mean that I did not give it to him voluntarily without his asking me for it. He asked me for it. My strong impression is, that I gave it to him without expecting him to return it. 6270

Question.—Why did you not tell Mr. Murdock that Mrs. Peck had tampered with his letter?

Answer.—Because Mrs. Peck entrusted me not to do so at the time she showed it to me, and I had promised her I would not. I consider the two gallon jug was filled on an average every ten days, and went up when it was filled, probably it went up a dozen times—it may have been only about nine times. If I was to gain anything by naming a number, I would say the figure ten was nearest approximating it. 6280

Question.—What did you mean by the words, in your direct examination, "it went up full five or six times."

Answer.—I don't remember having said it went up five or six times on my direct examination, except in connection with the carrying of it up by Mrs. Peck. And these are the only times I can swear to its being carried out of the house by my own knowledge having seen it carried out, although I believe it went out full about ten or twelve times.

Question.—What did you mean by the following words :—"I remember the circumstances attending two or three of them, (referring to the times it went up)." 6290

Mr. Owen objects, as it is impossible for the witness to understand the nature of the question, or what was said or meant by him on direct examination from the short extracts referred to by Mr. Weatherbe.

Answer.—I do not remember in what connection these words were stated by me, or what they followed, but I remember circumstances connected with two or three times of the jug going up to Mr. Murdock's. One was when she carried it out of the yard in the morning, in a shawl, in her arms; and I remember another occasion when I hesitated to let her take it, because I believed her too much intoxicated; and I remember a particular occasion when I complained and told her, I'd refuse to allow the quantity of liquor to go up to Mr. Murdock's. I first complained to Mr. Murdock about the quantity, after two or three jugs went up, about the end of May. I complained to him down in my house, that it was a wrong, and a shame that so much liquor went up to his house. I think that was in my parlour—can't remember whether any of the family were present. Previous to that, he came to my house intoxicated. I don't mean that he was drunk, but I'm under the impression he had come to my house two or three times before that, that I had thought he had taken too much liquor. I remember that on one occasion I had spoken to him about it. I can't call to mind his coming to my house in liquor, after my return home in the Spring of 1875. It was previous to that, I believe, I saw him as I believed, having taken rather too much liquor. I decidedly thought that there was too much liquor going up, after I returned in the Spring of 1875, up to the time of my fire, and so I mentioned to Mrs. Peck, to Mr. Murdock, and in my family. Finding 6300

that it was continued with little abatement in quantity, I brought it to Mr. Murdock's notice again about a few weeks before the fire. That was at my house also. He was surprised at the quantity himself, and appeared not to be able to reconcile it with the quantity that was used in the house, and asked me to go up to his house, and speak to Mrs. Peck with him. I went up with him that evening. Mrs. Peck was either called in the room, or came in the room, the bedroom. She was asked with regard to it. I don't remember of my commencing the conversation. Mr. Murdock commenced it, I think. He repeated very nearly what I told him down in the house with regard to the quantity. I remember Mrs. Peck said it was very weak stuff, that Mr. Murdock had a great many friends coming in, and inferred that a great deal went in that way. I can't remember her saying she drank it, but she said she gave some away. Mr. Murdock had a considerable run of friends coming in to see him. He did not entertain formally. Don't remember his ever giving a formal party.

6310

Question.—Who were in the habit of going to see him, give me the names?

6320

Answer.—I can't say the Rector was in the habit of going to see him, or the Curate, of my own knowledge, before I went up there, but I believe they went to see him, from conversations with Mr. Murdock.

Question.—Can you give me the names of any other person that was in the habit of going to see him?

Answer.—I cannot say, from my own knowledge. I know of persons going there. Doctor Jacobs was in the habit of going there in a friendly way, and he was his doctor. I can't give the name of any one particularly. I can't think of anyone else—(all this was before the fire).

Question.—Why were the spoons not sent for about a month after they were missed?

6330

Answer.—I don't think they were missed a month before they were sent for, and I can't say exactly why they were not sent for. I did not concern myself with regard to them; we were provided with the necessary spoons; had provided ourselves when those were missed. I remember Mr. Murdock saying they were family spoons and she'd have to bring them back; besides, I say that as soon as the stove was missed, Mr. Murdock then wrote her a letter demanding both. I can't remember the exact date we moved into Mr. Murdock's house. It was about a week after the 29th July. That letter was the first notice sent to Mrs. Peck of which I am aware. (Letter dated September 13th, 1875.)

Question.—Had Mr. Murdock any knowledge of Mrs. Peck's having taken the spoons till the 13th?

6340

Answer.—I don't know that he had any more knowledge on the 13th than he had on the evening they were missed. But Mrs. Peck having made a very clean sweep of nearly all the articles in the house, Mr. Murdock, immediately on their being missed, said Mrs. Peck must have taken them, as she had everything else, and that she'd have to bring them back.

Question.—I ask you on your oath, whether Mrs. Peck took a single article out of the house but the stove and spoons. If so, name the article, and how do you know it?

Answer.—I cannot say that I saw her personally take any thing from the house; but I remember when she left, a team (oxen and wagon) being there; and I saw it filled up with articles. I believe it went away twice or three times (the team filled up), and immediately after that the house had little left in it. I remember some person saying something to Mr. Murdock about it. I don't know who, it may have been myself; but I'm not positive. (Objected to as hearsay, by Mr. Weatherbe.) He said that he felt so rejoiced or glad to get rid of her (that was the idea conveyed), that everything else was of minor importance, or something of that kind.

6350

Question.—Do you swear the team was there twice?

Answer.—I won't swear it was there twice. I think it was there thrice; but I won't swear to more than once.

Question.—The team that you swore to being there once,—whose team was it?

Answer.—I would not swear positively whose team it was. I have an impression; don't know how it has been formed, that it was James Young's team. I can't say whether I spoke to the person having charge of the team.

6360

Question.—Did you not specially direct him with regard to the things taken out of the house?

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Answer.—I do not remember having any conversation with the party, and I do not remember who had charge of the team. I was there when the team was at the door once; but I was not there looking after the things that went out.

Question.—Was Mrs. Kaulback and Mr. Murdock not present with you when the man took Mrs. Peek's things away?

Answer.—I may have been present with them when the man took some of the things out of the house; but I certainly took no control with regard to them. I can't say what time of day it was.

6370

Question.—Did Mr. Murdock miss anything, and what?

Answer.—Nearly every thing was missed by him. I heard him complain himself that she also took his change of bedding.

Question.—When he spoke of having the spoons back, did he say anything about the other things?

Answer.—I don't remember at that time his saying anything but about the spoons. The spoons were spoken of at the table. He did not say that he did not mind the other things much at the time. He said that he didn't mind the other things much in comparison with getting rid of her.

Question.—Didn't he say it in comparison with the spoons?

6380

Answer.—No. I may have said in my direct examination that Mrs. Peek was about 12 or 14 days in the house with us. My impression is that I did not say so. I believe she was about a week or ten days.

Question.—Do you say on your oath that you ever saw her intoxicated during that period?

Answer.—If you refer to the period that she was in the house with us, I say yes.

Question.—How often, and state the particular circumstances.

Answer.—From my own observation she was in liquor twice; I heard of her being in liquor at other times. As far as my memory serves me, the first time was: I came home to dinner. There was a delay in getting the dinner, and I observed Mrs. Peek was intoxicated.

Question.—Where was she intoxicated?

6390

Answer.—Passing through the kitchen.

Question.—Did you see her in any other part of the house at that time?

Answer.—I can't remember seeing her on that day at any other time or in any other part of the house then.

Question.—Were you in the kitchen yourself?

Answer.—I think I was in Mr. Murdock's library and the door was open to the kitchen. I may have passed through the kitchen that day, because it was the most convenient way of getting from the library into the garden. I won't swear I was in the kitchen at that time. I observed Mrs. Peek passing across the kitchen not long, but she was decidedly drunk, there's no question about that. I don't remember seeing anything in her hands. I believe she had nothing in her hands; she was not in a fit state to carry anything safely.

6400

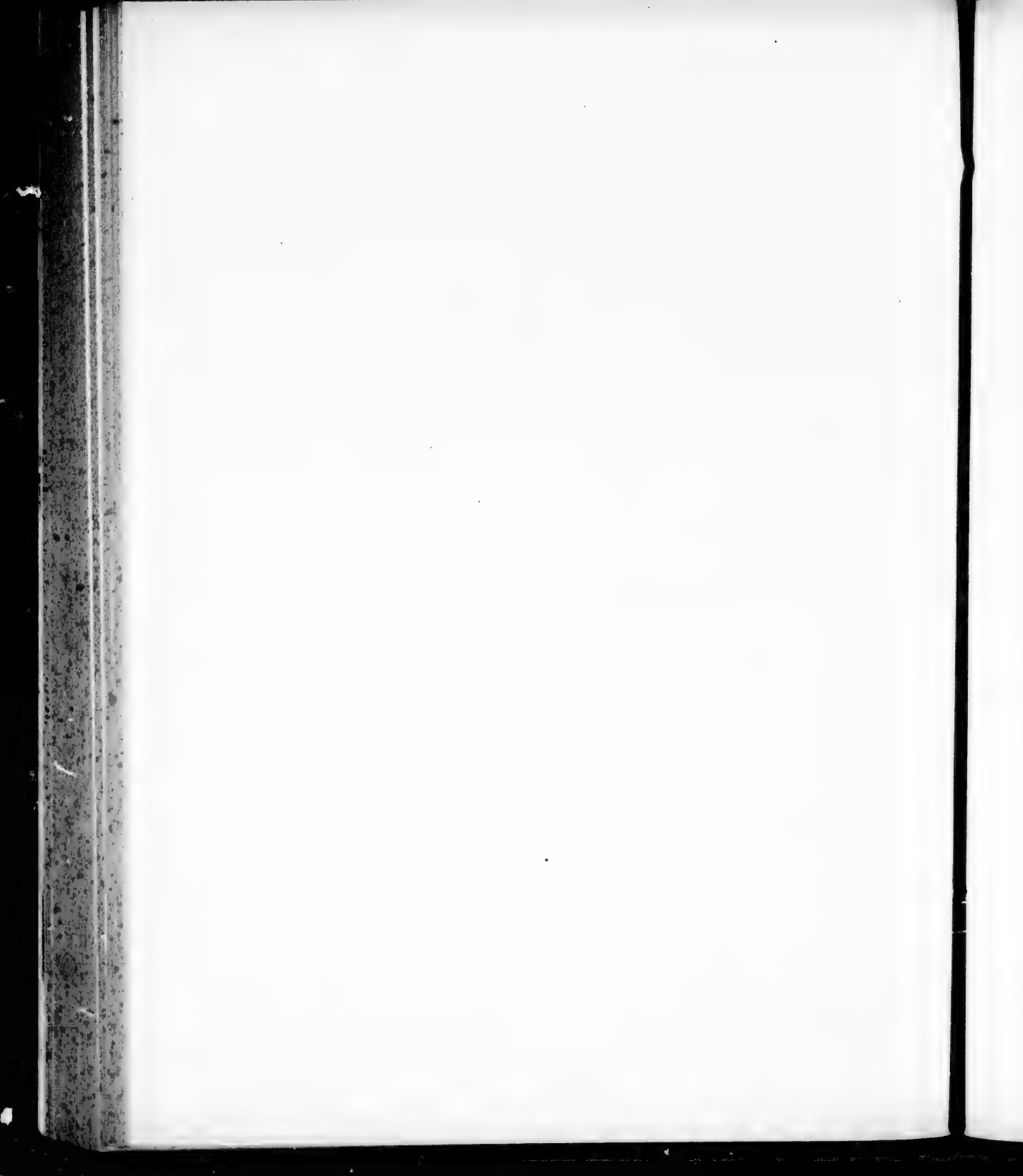
Question.—On what other occasion during the period that you were living in the house with Mrs. Peek do you refer to when she was under the influence of liquor?

Answer.—She was under the influence of liquor on the occasion that Mr. Murdock was going with me to the kitchen. He went there to enquire about that letter of Miss Crowe's, which Mrs. Peek has said she had taken to a lawyer's office (I mean as Mrs. Peek informed Mr. Murdock and as Mr. Murdock told me. As Mrs. Peek never told me and I never heard her say she had taken the letter to a lawyer's office. On that occasion I found her under the influence of liquor. Coming home one day, in the middle of the day, Mr. Murdock told me on my coming home from my office that the old woman was dead drunk up stairs, and that I should go up and see her or look at her. I did not go.

6410

Mr. Weatherbe objects to this evidence as evading the question; request the Judge to compel the witness to confine his answers to the questions put.

Question.—Now, will you answer the question I put to you without evading it by referring to other matters. I want to confine you entirely to the last time you yourself saw Mrs. Peek drunk, and I want to describe just what you saw that indicated her intoxication?



Answer.—I have no wish to evade any question, but on the contrary to answer every question fully, and not be stopped when the answer is not such as desired by the question. I cannot say which occasion was the last time I saw her drunk, whether it was the time that she staggered through the kitchen, or when Mr. Murdock in my company asked her what she did with the letter which he gave her to mail for Miss Crowe. I am ready to answer the question just asked to either or both, whichever you mean. 6420

Question.—Have you not already stated that the first time you saw her drunk was when you came home to dinner?

Answer.—Both times that I saw her drunk was when I come home to dinner.

Question.—Have you not described as the first time that you saw her drunk when you saw her in the kitchen?

Answer.—Both times when I saw her drunk was when she was in the kitchen.

Question.—Have you not described as the first time when you saw her drunk that you were in the library and the door was open and you saw her in the kitchen, and did you not use in that description the words, "the first time," yourself. 6430

Answer.—I don't think I named that as the first time; it probably was the first time.

Question.—Will you state what indications, on the probable second, or other occasion there were, which led you to infer that she was under the influence of liquor?

Answer.—If you now refer to the occasion that I accompanied Mr. Murdock to enquire about the letter, her walk and manner unmistakably convinced me she was in liquor. I cannot particularize.

Question.—Have you stated all the occasions that you yourself observed Mrs. Peck under the influence of liquor, while she was at the house after you were there.

Answer.—Those were the only occasions I remember. I have frequently seen her under the influence of liquor on other occasions, when she did not reside in the house with us. Twice I saw her helplessly drunk in that house of Mr. Murdock's, once lying in his bed, and another time lying in the kitchen on the floor. Mr. Murdock did not, that I'm aware of, (not in my presence) see her on those occasions. The first occasion I don't know where he was. I went to see him and did not find him at home. On the second occasion I went home with him and found her drunk in the kitchen on the floor. The last occasion was not many days before he was laid up with the broken rib, (in January, 1875.) That is before the time that she swears he broke his rib coming home drunk from my house. I don't know whether he saw her on that occasion. He was sober when he left my house that night, as on all other occasions. 6440

Question.—Could he see that night?

Answer.—I know of no difficulty in his seeing that night. He didn't see Mrs. Peck drunk on the floor while I was there that night. After we got in and sat down a little while he enquired of me: "I wonder where Mrs. Peck is." He wanted some water. I think he rang for her. I then said, never mind, Mr. Murdock, I'll go and get some water. I then took a light and went to the kitchen and got a pitcher from the dresser, and went for a pail of water; on my return through the kitchen I observed her lying near the stove. I went into the room with the pitcher, and a short time afterwards he wanted a decanter, which was on the table in the kitchen, and I went to bring it in, as he asked me. I was curious to know whether she was just sleeping, tired or drunk. I went up to her, took hold of her, smelt the liquor and saw she was drunk. I did not think that was a great liberty to take with another man's servant. I did not tell Mr. Murdock that night, as I wanted to think about it, and see what was best to be done. 6450 6460

Question.—Did you ever tell him?

Answer.—Immediately afterwards, before I had ventured as to what I would do, he had the misfortune of breaking his ribs, and I did not consider I had the time or a convenient opportunity to say anything to him about it, as I left home before I considered him well enough to trouble him on such a subject. She did not get up when I took hold of her that night. She did not speak to articulate anything that I could understand. She muttered something. I can't say if she opened her eyes. She moved and said something, but I could not understand what she said. I smelt the fumes of liquor on her. I don't know that I put down my head to smell her breath, it was not

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necessary, she was helplessly drunk. I stooped low, everything indicated that she was helplessly drunk; her position on the floor, the smell of liquor. It was about 10 or 11 o'clock in the evening. 6470

Question.—Except from her breath, could you state positively, on oath, that she was drunk?

Answer.—Yes, I have not the slightest doubt of it. Oh! she was helplessly drunk.

Question.—Did you smell the fumes of liquor from her breath?

Answer.—I think I did.

Question.—Did you say on your direct examination that she was twelve or fourteen days in the house after you moved in?

Answer.—That question you have asked of me several times. I don't remember if I said twelve or fourteen days on my direct examination, but my impression is that we were there a week or ten days while she was there. I saw her on no other occasion helplessly drunk. I did not tell Mr. Murdock at the time I saw her on Mr. Murdock's bed helplessly drunk; I went into Mr. Murdock's bedroom; I went up to her and think I put my hands on her to shake her. I smelt her breath. If I mistake not, I think there was some whiskey alongside of her in a tumbler. 6480

Question.—Did you drink it?

Answer.—Certainly not.

Question.—Did you yourself drink any whiskey on the other occasion when you saw Mrs. Peck helplessly drunk and smelt fumes of liquor from her?

Answer.—I do not remember having drank anything there with Mr. Murdock that evening. I think I took a pipe with him. My impression is that he did take some liquor that evening, about a couple of tablespoons full and filled up the tumbler with two-thirds of water. He generally did that when he smoked and sipped it as he smoked. I never saw Mr. Murdock take, to my knowledge, what would be called a glass of liquor. 6490

Question.—Will you swear that on every occasion when you drank in Murdock's presence that you looked at his tumbler to see how much he drank?

Answer.—No, I did not look to see how much he drank, but I know about his habits and manner of drinking. He would, I might say invariably almost, take what we'd call a third of a glass, and fill it up about two-thirds with water, which would generally remain in his tumbler for hours before it was finished. That is if it was at an evening sitting. 6500

Question.—Did you, in the majority of cases, look at his tumbler to see how much he poured out?

Answer.—I don't remember looking particularly to see, but I have frequently remarked to other persons in Mr. Murdock's presence as to the character of his drinks. I do not know of any one who takes liquor who took it in the diluted way in which he did. I have supplied him with other liquors except whiskey. He has got Champagne, Sherry, Claret, and possibly some other liquors which he may have got on several occasions. I cannot say how Mr. Murdock's sight was on the 30th of August, after the will was made. He could always see. I cannot say that I ever saw him that he could not see to read, but sometimes with great difficulty. I have never known him to say that he could not read at all. 6510

Question.—Could Mr. Murdock, down to the time that you left for Ottawa, in January 1876, see to read to some extent?

Answer.—I believe that the larger portion of that time he could see to read fairly well. On some days he would complain of his sight being very bad, very poor, but except the time in December when he was sick. I do not believe there was a time that his sight was so impaired that he couldn't read at all.

Question.—Was he not in such a condition at the end of August, 1875, that he could see to read no more?

Answer.—I do not understand whether the question means whether he could not read at all on that day, or whether it means that from that day forward he could read no more; for if the latter, I can say that I have seen and heard him read, and seen him write and read writing frequently after that. 6520

Question.—Were you in a position to know during the time that you lived with Mr. Murdock, and did he express to you his opinion as to the state of his eyesight?

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Answer.—No person could possibly, during the time I lived with him, have known more or better with regard to his sight than I did. He would frequently remark, with regard to his sight, and say what condition it was in, to me.

Question.—Did he familiarly in the same way express himself with regard to the state of his health?

Answer.—He would freely and familiarly express himself to me in anything that afflicted him. He would not particularly as regards his health, but more about his sight. 6530

Question.—At the end of August, was Mr. Murdock not in such a condition that he did not expect to read any more?

Answer.—It's impossible for me to answer what he expected; but I never remember hearing him express an opinion that his sight had so left him. I have seen him that he could read better at night than I could myself, after that. (I refer to last of August.) I don't remember of any time that he could not read at all. I can't remember the last of August. He had not the last of August given up or lost his power or ability to read. I know of no time at which he had lost his ability to read. I scarcely think that without my knowledge he could have given up all hope of the continuance of his ability to read. 6540

Question.—At the end of August, do you not know of his giving up hope of being able to read any more?

Answer.—No. I don't believe he ever despaired of reading any more, but I've heard him say that he didn't believe that he would ever entirely recover his full sight, that he believed the disease was incurable. That the disease was amarois, that he had consulted eminent medical works on the subject, and he had known persons similarly affected, and he didn't expect to recover. That books had stated some isolated cases, but he believed their cure was more a matter of accident, than the skill of their physician.

Question.—Does the description of Mr. Murdock's opinion as to his eye-sight expressed in that letter of 30th August, in evidence, correctly represent that which he expressed at the time in his intercourse with you as described by you? 6550

Answer.—No.

Question.—Is it then an incorrect description of the state of his eye-sight at the time?

Answer.—It does not accord with my opinion of his sight.

Question.—Does the description of his state of health under the deadly fit of illness worse than he had ever felt in all his life, during the month of November, as described by the hand of your daughter Edna correspond with the fact, as you were aware of it at the time?

Answer.—I have not seen that document, or anything else to refer me to it.

Question.—It was read and filed in Court on the 26th August, and then put in your hands, and I now put it in your hands, and I ask you if it describes the fact? 6560

Answer.—I say that I do not know, and on the contrary, am sure he was not suffering from a deadly fit of sickness in the month of November. That he had no sickness in the month of November that would necessarily confine him to the house. That I remember that about that time, (about the time Mr. Charles Beamish and Stephen Beamish were here), that his rest was disturbed, and he had been annoyed and worried, of which he sadly complained, but that was temporary in its nature, and may have lasted about a day. I'm not aware of his doctor being called, neither did I see any occasion for the call of a doctor. I think, if my memory serves me, I heard him complain to the doctor of the effect of the disturbance of his, and of the annoyance which he had been subjected to, and I think he asked the doctor to give him some opiate, or something to quiet his nerves. 6570

Question.—Do you state that in any sense of the word, the cause of any sickness or uneasiness he had in November was attributable to the visit of Charles Beamish previously?

Answer.—I say yes, certainly. Yes. Mr. Murdock complained bitterly of the conduct of Mr. Charles Beamish on his visit in October. He complained of Charles Beamish's cruelty to him, and that he came down here to embitter his last days. That he (Mr. Murdock) had left Halifax and his relations to seek quiet and comfort, and that when he had found it, and was happy, that he came down with no other motive than to try to alienate him from me and my family. That he had nothing to bring him down here, but to effect that object,—to alienate him from me, and to get at his property. He told Mr. Beamish plainly in my presence, that his visit was disagreeable

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to him, that he could not make the money or few dollars an excuse for coming down. That he might have sent him the money by Post Office order, as he had frequently suggested; and I believe that his irritation and his nervous disquietude was owing to the visit of both Charles and Stephen Beamish. On Charles Beamish's visit in October, Mr. Murdock told him his visit was disagreeable to him. I can't speak positively of any one being present. I think Mr. Norwood heard something similar to that from him, that is, that he did not wish to see him. 6580

Question.—Will you undertake to swear, that on the 29th November, 1875, the deceased Murdock was not slowly and gradually recovering from a deadly fit of illness, brought on in the early part of November, on the departure of Stephen Beamish from the Town of Lunenburg, as described in the hand-writing of your daughter?

Answer.—I say that I have been asked this by the questioner several times in various ways, and I state positively that Mr. Murdock was not suffering from a deadly fit of sickness in November, that he was complaining when Mr. Stephen Beamish was here, but was not necessarily confined to the house. 6590

Question.—Was he slowly and gradually recovering from any illness at that time, (29th November).

Answer.—He was not. I don't think I slept out of Murdock's house during the month of November. I think I saw him go to bed every night in November.

Question.—Were you not aware that this letter (No. 2, G. T. S., 29th Nov.) was written and mailed.

Answer.—I certainly was not aware that that letter was written and mailed before last April or May, as I knew nothing about Mr. Murdock's correspondence from my daughter. I never knew anything of it from my daughter, neither did Mr. Murdock tell me. If I have seen a copy of that letter, it was since April or May last, since my return. The same daughter that wrote that letter just referred to, made the interlineations in her own hand-writing, in the copy of the draft of Mr. Murdock's will, in November. The watch that was left me in the November will, Mr. Murdock gave me absolutely as my own property, (subsequently to the making of the will,) three or four days before I left home for Parliament, in January 1876, and I have worn it on my person ever since, and have it now in court. It's a good watch. I don't think it cost \$300. 6600

Question.—How much do you think it cost?

Mr. Owen objects on grounds of irrelevancy.

Answer.—Mr. Murdock mentioned to me what it cost, but I really forget it. I think it is worth about two hundred dollars. I think it cost somewhere about that, although I am not positive. 6610

Question.—Do you mean to say that he could see to read writing after the end of August,—for instance letter of your daughters?

Answer.—I would swear positively that on that day he could see to read the letter referred to. But I am certain when I say that the major portion of his time he could see to read writing and to write and to read books. That I know at the time of the making of his will that he could see clearly to read, and expressed himself on the day the will was made, happy that his sight was so good. I refer to the will of November. 6620

Question.—Could Mr. Murdock see to read pencil writing in October or November, or any time after he expressed himself as not being able to read any more, in the letter of 30th August.

Mr. Owen objects to the question as conveying a wrong inference from the contents of the letter of 30th August, thereby having a tendency to mislead the witness.

Answer.—I don't remember seeing him read any writing in pencil. I believe that after the date of that letter he could see to read sometimes in the evening, after August, as well as I could myself.

Question.—Did ever any one else, in your presence, see him read a book aloud after 30th August?

Answer.—I cannot recall to mind of any person, in my presence, seeing Mr. Murdock read a book, but I have seen him after that read letters which he got by mail. 6630

Question.—Did any person else, in your presence, see Mr. Murdock read a manuscript after August, and if so, state who?

Answer.—I believe that some members of my family and others, must have seen

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him read after August; but I would not like to mention any particular person. I've seen— (Mr. Weatherbe here interposes, and requires the Judge not to allow the witness to vary the above evidence on the ground that Mr. Owen interposed after the first part of the above answer was given by coming forward from his seat, between him (Mr. Weatherbe) and the witness, and in a distinct voice asking, close to the witness, for Mr. Solomon's evidence, and after being remonstrated with by Counsel, repeating his request for Mr. Solomon's evidence. Mr. Solomon being one of the witnesses to the will of 15th November, and Mr. Weatherbe contending that Mr. Owen's remark was a suggestion to the witness, that evidence has already been given, either by Mr. Solomon or Wentzel (the other witness), that the will was read by Mr. Murdock. (Mr. Owen states that he [Mr. Owen] asked the Judge for Mr. Solomon's evidence, and that he reiterated the question to the Judge, and that the witness has stated under oath, that said request made by Mr. Owen to the Judge, was not overheard by him and did not in any way suggest the answer.) 6640

I have seen Mr. Murdock read the draft of the will on the day of its execution, in November. I believe that Mr. Wentzel and Mr. Solomon saw him read the will when executed in November, as when I entered the room Mr. Murdock had the will in his hand open, and from my remembrance at the time, believe he had just about finished reading the will. I have seen him read the draft of that will the early part of November,—the draft from which I copied. I state that I received no suggestion from Mr. Owen; that I did not hear him refer to any evidence of Mr. Solomon. That I think I heard him ask the Judge for Mr. Murdock's will, which, I believe, was before the last question was put to me. I did not consider it intended as a suggestion, and I say it did not suggest anything to me. 6650

H. A. N. KAULBACK.

Sworn to at Lunenburg, in the County of Lunenburg, this 30th day of August, A. D., 1876, before me,

GEORGE T. SOLOMON, *Judge of Probate.*

COURT OF WILLS AND PROBATE.

6660

CO. OF LUNENBURG SS.

In the matter of the proof, in solemn form of law, of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister-at-Law, deceased.

The examination of Amelia Holland, of Lunenburg, in the County aforesaid, widow, taken before me, George T. Solomon, Esquire, Judge of Probate of said County, this thirty-first day of August, A. D., 1876, who, being duly sworn, deposeth and saith:

I remember when Mr. Kaulback's fire took place about 29th July, and the time (shortly after the fire) of the Kaulback's moving into Mr. Murdock's house. I know Mrs. Peck. She was living at Mr. Murdock's when the Kaulback's moved in there, and she left about a week or ten days afterwards. I was at Mr. Murdock's between the time the Kaulback's moved in and Mrs. Peck leaving. Mrs. Kaulback sent for me to come and do some washing for her. I saw Mrs. Peck there on that occasion. She was drunk. I could tell by her ways and actions that she was drunk. She was staggering about the kitchen. Such queer talk she used to have and she could not cook the dinner that day. I know, because I had to cook it. 6670

Cross-examined by Mr. McDonald.

I am living as a servant in Mr. Kaulback's house, have been there for the last four months.

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I know Ada Pettit, the last witness. She was not there that day. I had been at the house before that day. I was there occasionally working from the time Mrs. Kaulback moved in till Pettit came. Two days, I think. That was the only time I saw Mrs. Peck the worse of liquor. She is a native of Lunenburg, been living here all her life. I have known her for years. I think ten years myself. 6680

Sworn to at Lunenburg, in the County of Lunenburg, }
the 31st day of August, A. D., 1876, before me, }
GEO. T. SOLOMON, *Judge of Probate.*

AMELIA HOLLAND.

LUNENBURG, 31st August, 1876.

Court adjourned to meet on the 26th October next at 10 o'clock in the forenoon.

GEO. T. SOLOMON,
Judge of Probate.

COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

6690

In the matter of the proof in solemn form of law of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister-at-Law, deceased.

The examination of Charles W. H. H. Kaulback, of Lunenburg, in the County aforesaid, gentleman, taken before me, George T. Solomon, Esquire, Judge of Probate of said County, this thirtieth day of August, A. D. 1876, who, being duly sworn, deposeth and saith:

I am seventeen years old. I am a son of Senator Kaulback's. I knew the late Mr. Murdock, I should say, about four years. I knew him from about when he first came. He was in the habit of coming to our house a great deal, from the time he first came to Lunenburg up to the time of the fire. He often took his meals there; sometimes breakfast; very often dinner, and mostly always tea. He was, during that time, in the habit of conversing freely on different subjects. He would play on the piano sometimes, sometimes on the flute. He played chess, too, up to the time of the fire. I played several games with him myself. He was on good terms with us all up to that time. Such was the case up to the time I last saw him. I last saw him about the middle of January, 1876. He went out driving with me sometimes, and sometimes with my father. The fire took place Thursday morning, 29th July, 1875, I think. I remember meeting Mr. Murdock at Mr. Gaetz's just after the fire. I was there when he wanted them to go to his house (by them, I mean our family). He said "He wished us to go up to the house; that he considered us his family. He said he would enlarge the house if it was too small. (I do not know whether this last was on the same occasion, but it was at the Gaetz's.) I heard him on more than one occasion ask them to go to the house. The servant at Mr. Murdock's house, at the time we went to live there, was Mrs. Peck. I never slept at Mr. Murdock's house but once, I think. I did not go there when my father and mother moved there, but I was there nearly every day, sometimes three or four times. I should say they moved up to the house about a week after the fire. Mrs. Peck was living there then. I saw her on more than one occasion between the time of my father moving into the house and Mrs. Peck's leaving it. I should say that she left about ten days after my father moved there. 6700

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One day Mr. Murdock gave Mrs. Peck a letter to mail. (Objected to.) He told me so. He said to Mrs. Peck in his study, in my presence, "What did you do with that letter I gave you to mail, what did you open it for?" She said "I always mail your letters." She then left and murmured something, but I could not tell what it was. I thought by her manners and actions at that time that she was in an intoxicated state. I at other times saw her intoxicated between the time of my father's moving into the house and Mrs. Peck's leaving, once beside the time at which Mr. Murdock accused her of the letter. At this time she staggered about the kitchen and used to pick things up and lay them down again, and once she came in contact with the wall. I did not, I think, see her more than twice under the influence of liquor after my father moved into the house. I saw her in that state once before the fire. I went up to Mr. Murdock's about ten days or a week before the fire to get him to sign a warrant of attorney. He was to sign it as the defendant's attorney. He signed in three places. I wanted a drink of water and Mr. Murdock called upon Mrs. Peck to get the water. In going to the bucket to get it, she staggered and she did not bring in the pitcher of water. She called me to take it in. She would not come into the room at that time. I do not know at whose request Mrs. Peck left the premises. Mr. Murdock delivered me a letter for Mrs. Peck after she left, only one, about a fortnight I should say after she left. It may have been longer, may have been three weeks. I delivered it to Mrs. Peck. I went right to the house where Mrs. Peck was living at the time, and delivered it to her personally. It was in an envelope, directed by Mr. Murdock to Mrs. Peck. (Mr. Owen tenders a letter from Beamish Murdock to Mrs. Peck, dated Sept. 13th, 1875, marked "H. G. T. S." and filed on 17th August, 1876.)

(I do not remember whether any one was present when Mr. Murdock gave me the letter. Mrs. Peck had then left Mr. Murdock's. It was the only letter Mr. Murdock gave me for Mrs. Peck.) Mr. McDonald objects that it is not proved to be a copy of the letter. (Letter "H. G. T. S." refiled and put in evidence.)

I remained in Lunenburg a few days more than two months after the fire. I left 1st October. I went to "King's College," Windsor. During the time that intervened between the fire and my leaving for college, Mr. Edward Owen assisted in preparing me and Mr. Murdock also three or four times. Mr. Murdock assisted me by giving a good translation of passages and the derivation of words. That was about the last of September. I was then studying Latin and Greek. On those occasions he used to repeat lines from Virgil and Homer from memory. I should say fully sixty lines of Latin (that is Virgil.) He then told me he had not looked at the text book since he was about 12 or 15 years old. Mr. Murdock was translating into English a French history of Nova Scotia. He said the original was over two hundred years old. This (produced) is the translation, and excepting the last page is in Mr. Murdock's handwriting. I saw him translating and writing in this book up to the last of September. I saw him write and translate a portion of said French work in this book in September. (Mr. McDonald objects as being irrelevant.) I could not say how many pages he wrote in it in September. I used to see him write in it at different times. I did not stop long. I should say that I saw him writing in that book in September fully half-a-dozen times. I would look over his shoulder and see him write in it. (Translation referred to marked "No. 36, G. T. S." filed and put in evidence, subject to the objection.) I had in addition to his assisting me with my studies, conversations with him every day before I left for college (between time of fire and my leaving.) Mr. Murdock conversed with others in my hearing. Mr. Murdock had a large garden. He used to attend to it himself very often. Nearly always when I would come up to the house he used to be in the garden. (I mean during the day.) He was engaged there in weeding, collecting seeds. He had many vegetables in his garden. I have seen him occupied in connection with them, picking beets, cucumbers and corn, and bringing them into the house. He had a choice as to food. He was very fond of beets and soup, and cucumbers, and I think all kinds of vegetables he liked, but fish he did not care much about, or geese. I thought he was very clean and neat in his dress.

I was present during September and December, 1875, and January, 1876, when he retired to bed. I returned from King's College about the 22nd December, 1875. The times that I saw him undress he required no assistance. I never knew any one to assist him in undressing and preparing for bed, and never knew him to require any such assistance. I never at any time saw Mr. Murdock under the influence of liquor, either while he was in the habit of coming to my father's

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house, or at any time. I have seen him drink Rye Whiskey. He would put about two table-spoonsful of Whiskey into a tumbler, sometimes not as much, and then fill the tumbler very nearly full of water, and then he would sip it and converse at the same time. He was able to read and write during the month of September, and up to the time I left for King's College. I have seen him write and heard him read. On my return from College in January last I remember on one occasion Mr. Murdock's reading a novel. He read as long as I was in the room, about a quarter of an hour, may have been a little longer. When I left for College 1st of October Mr. Murdock's health was very good. I do not remember of his being sick. His memory was very good, and his mind as far as I know and saw. On my return he examined me in Latin and Greek to a certain extent. Then afterwards I tried to puzzle him and got dictionaries, but could not do it. Latin, Greek and French dictionary. Judging from that his memory was very good. I had conversations with him after my return as well as before, and have heard persons conversing with him. I remember Mr. Chas. Beamish being at Lunenburg towards the last of September. Mr. Murdock said that he did not wish to see Mr. Beamish come into the house. That he wished the door to be shut on him. He also said that Mr. Beamish did not come down to look after his (Mr. Murdock's) affairs but came down to look after himself, his own. I remember Mrs. Peek taking liquor to Mr. Murdock's house before the fire, in a jug. It held about two gallons I should say. This was in my father's office she got it. Father complained to her that there was too much liquor taken up to the house. Mrs. Peek said "I did not drink it, Mr. Murdock has friends." (Mr. McDonald objects on the ground that this is hearsay evidence. Judge admits it.) I was present when a conversation took place between my father and Mr. Murdock with regard to this liquor that was going up. He (Father) complained to Mr. Murdock that there was too much liquor went up to the house. I do not know what Mr. Murdock said, he appeared to be indignant.

Q. Was Mr. Beamish, or any one else, to your knowledge, prevented from having access to, or interviewing Mr. Murdock, by your father, or any member of your family, to your knowledge, either before or after the fire? (Mr. McDonald objects as leading.) A. No. I have been present during arguments between Mr. Murdock and others up to the time of my leaving for King's College and on my return. Some of these arguments were between Mr. Murdock and my father. I do not remember on what subjects. Mr. Murdock was not on these occasions easily persuaded—always maintained his own views, and always held his ground to my knowledge.

Q. Did your Father ever, to your knowledge, in any way, either by word or deed, directly or indirectly, attempt to influence Mr. Murdock with respect to the disposition of his property? (Mr. McDonald objects to question. Judge admits the question.) A. No. I remember Mr. Murdock playing the piano, and flute and chess, after my return from College. He played chess with my father and with me. He (Mr. Murdock) played as good a game then as usual. I remember his dining with us last Christmas Day—that is with my family. I again returned to Windsor the middle of January, 1876. Mr. Murdock's health at that time was as good as usual. It was very good. During my visit here (1st January) Mr. Murdock took a walk up to the druggists. It was a cold day. The distance was the length of four squares. My little sister accompanied him there, I did not. Up to the time I returned to college he was cheerful. I do not think there was any perceptible change in his mind from the time I first saw him up to the time I last saw him.

Cross-examined by Mr. McDonald.

When Murdock came to reside at Lunenburg I was nearly 14 years of age. I was 13 years old. He lived first down near the wharf. He was as intimate at the time he first came down in our house as he was at any period after up to the time of his death. I don't know how long he remained here the first time before going away. Whether 6 months, a year, or two years. I was not here when he sold his house or went away. I was at Charlottetown then. I was at Charlottetown for 2 years before I went to College except at my holidays when I was home. I think I went to Horton to school, cannot say whether before or after Mr. Murdock came. I was one year at Horton. I went to Horton in September. Mr. Murdock, I think, came before I went to Horton, and all I know of him was when I was home for the holidays. In giving my answer about the breakfast and dinner and tea I referred only to my holidays before the fire. Before that, on other occasions when I was home from school he was there, but not so often. When I came home the last of June, 1875, from Charlottetown, he was more frequently, I think, about the house than at other times. I remained at home at that time until November, when I went to College. Up to time of

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fire he was living in his own house. The only occasion I know of any one of our family visiting Mr. Murdock, while he lived in his own house, was one evening that I and my mother and Mr. McKettee went up, (we did not go out with that intention), except myself two or three times. Mr. Murdock was an old man when I first saw him. I suppose he was 71. He did not look to me as old as he really was when I first saw him. He did not grow old looking rapidly from that time.

6830

Q. Did he keep pretty much the same old six-pence from the time you first saw him, until he died? A. Yes.

Q. Did Mr. Murdock keep pretty much the same in appearance and health from the time you first saw him, until he died? A. Yes. He got a little weaker of course.

I do not know of any illness or fit of sickness that Mr. Murdock had during that time, to my knowledge. I do not think he could have had any sickness or fit of sickness when I was home without my knowing it.

Q. Were you in the habit yourself, when you were home for your holidays, of going to see Murdock at his own house? A. I would not leave the house to do so, but I did visit him three or four times before the fire, from last June till our fire, with that exception, I did not visit him. After the fire, and after my mother went to live there. I was up to the house every day, did not sleep there, but after I left Mr. Owen's house where I staid for about three weeks, took most of my meals at Mr. Murdock's. I conversed with him every or almost every day, his health during 1875, was as I had always known it. He had no sickness during that time, during the times I was home. I was home from the latter end of June, 1875, until I went to college. From the 6th of August up to the time I went to college, though not sleeping there, I was daily in communication with Mr. Murdock. During that period I did not know of his having any fit of sickness, and he could not during that time have had any sickness or fit of sickness without my knowing it. I saw him translating the French book the last of September. I am certain he was writing the last of September, and I think in August too. On several occasions I heard Mr. Murdock complain of his eye-sight, during that period (from 6th of August to time I went away). One day he would say that he could not read and the next day he would be able to write and read. I never heard him give any reason for the change in his optical arrangements. I left about the 1st of October, 1875, to go to Windsor.

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Q. Does the description which I now read from the letter of 30th August comport with your description yesterday of Mr. Murdock's health at that time. A. One day Mr. Murdock would say that his eye-sight was bad, and the next day he would say, "I can see to read very well. I can see to read a newspaper and fine print." I do not think it was a common statement of his during August and September, but I heard him about three or four times during that period make such statements. I only heard him complain during that time (August and September) of ill health or variable sight three or four times. This was during the same period I stated in my direct examination that he was translating French and aiding me in my lessons. I was at home about four weeks, from 22nd December, 1875, till about 22nd January, 1876. I do not think his eye-sight was so good in December and January; but I have seen him read and heard him read from a novel. I am certain of once; might be more. I cannot recollect more occasions. I think I found his bodily health the same. When I left in January his bodily health was the same as when I came home. I could not say that Mr. Murdock drank every time he came to my father's house, before the fire, but I have seen him drink; and when he did, he would take about two tablespoonsfull. When he came into the house, I could not say he always drank. On the occasion I saw him drink as referred to, he drank in the way referred to.

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Q. Will you tell me how you happened to observe so accurately Mr. Murdock's habits of drinking as to be able to make that statement? A. I could judge very near how much he put in a tumbler, and I tried with a tablespoon to see how much it was. I made the experiment with the tablespoon recently, but I am certain how much he used to put in a tumbler. This experiment has been made since I was aware I was to be examined in this investigation. The observations I made with regard to his habits of drinking apply to the time since I became acquainted with him, and since he has been in the habit of coming to my father's house. I think that the occasion I referred to upon which Mrs. Peck took liquor from my father's house to Mr. Murdock's is the only time I saw liquor taken from our house there. That was in August, 1875. I had known Mrs. Peck by name and reputation (she was a resident of Lunenburg), but never spoke to her before I

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came home in June, 1875, from school at Charlottetown. I thought she was about seventy years of age. I could not say whether I first saw her to speak to at our house or Mr. Murdock's. She used to come to our house to get things, such as tea and sugar and butter. I took the power of attorney up in July before the fire. I had spoken to her before that day; cannot tell where. I suppose I had spoken to her six or eight times before that, and had seen her in her own kitchen about two or three times before that. Nothing particular took me up to Mr. Murdock's house on these occasions. I would be sauntering along, and, having nothing to do, would run in. I saw Mr. Murdock on these occasions. I am certain she was intoxicated by her manner and actions; by the way she talked. 6880

Q. When you used the words, in your direct examination, "manner and action," what did you mean by it? A. I mean by her actions, the way she walked. She did not walk, but staggered. By her manner, I mean the way she talked and addressed Mr. Murdock and myself. 6890

Q. I want you to tell me what she said, when you say by her manner; you meant her talk? A. I do not know what she said, but the way she spoke and addressed us, I am certain she was intoxicated.

Q. How can you tell a person was intoxicated by their talk when you cannot tell what they said? A. I remembered at the time what she said, and from what she said then, it impressed on my mind that she was drunk, to this very day. That is the only time I saw her the worse of liquor before the fire. I think I called Mr. Murdock's attention to the fact of her being drunk in a joking way. I do not remember whether he appeared angry or whether he made any reply. All I remember about it is, that she was intoxicated, and what else I have stated. He signed the papers, and explained to me on that occasion what the papers were, because I asked him, because I thought it queer that he signed his name as defendant's attorney, and I thought it queer, as he was not instructed by the defendant. 6900

The next time I saw her intoxicated was after the fire, when my father's family were living in the house, when Mr. Murdock asked her about the letter. I could see into the kitchen, it was not all I saw of her when she was standing in the kitchen and Mr. Murdock was asking her about the letter. I will not be certain whether she shut the door, between the room and the kitchen, after leaving Mr. Murdock's room or not. If she shut the door I could not see into the kitchen. I cannot say now whether after she went out, I could see into the kitchen or not. All I can speak of with certainty is what transpired in the room, but I know she was intoxicated. In my direct examination I think I described all that was said by Mr. Murdock and Mrs. Peck on that occasion, excepting an observation made by her to Mr. Murdock when she entered the room on being called. I do not remember what that observation was. This was about five or six or seven days after my family moved into the house. I think I did call Mr. Murdock's attention jokingly to the fact. 7000

Q. Do you recollect you did? A. I will not be too positive that I did call Mr. Murdock's attention to her being intoxicated, but I am certain I did that of some person in the house. I cannot give the name of any person whose attention I called to the fact. I am certain I called somebody's attention to it. That was about noon I saw her intoxicated. On that day I did not see her after that, and do not know whether she kept the little spree up for the rest of the day. I did not see her drunk again, I think, after that, before she left the house. When I say "I think," I mean I do not recollect of having seen her. If she was so drunk after that, as when I saw her on the other occasions I would recollect it. If I saw her after that, and she had been drinking so much as to be intoxicated, I would not forget it. If she was not so bad as upon the occasions I referred to, if she had drank enough to make me observe, I would not forget it. I never saw Mrs. Peck drinking spirits. All that I heard her say on the occasion of the letter was "I always mail your letters." She murmured something else that I did not catch. She made an observation when she first came into the room, which I do not recollect. When she called me to get the pitcher of water, she came to the kitchen door and handed it to me. It was on Thursday that Mr. Murdock invited our family, at Mr. Gaetzes, when I was present to go up to his house. I think my father and mother were there. I do not know whether Mr. Gaetz was there or not. I think there was some person else, but do not know who it was. I am almost certain Rev. Mr. McKettee, of Potsville, United States, was in the room at the time. I heard him on another occasion after that, the same morning, invite them again, to go to his house, before the same people, I think. The first occasion was before breakfast, 7020

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and the latter a few hours after. On the second occasion he invited them up and said he would enlarge the house. I recollect that he said we were to live with him as long as he desired. I am not positive whether this was on the first or second occasion.

Q. Will your recollection enable you to tell me the terms used by Murdock on the second occasion. A. I remember certain things, but cannot say whether they were spoken on the first or second occasion, but I am certain that he said it was their home as long as they desired, and on one of those occasions, I think it was the second, he said he would enlarge the house if they desired.

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Q. Did you not tell Mr. Owen in the direct examination that it was on the first occasion he used the words that he would enlarge the house? A. I do not remember positively whether it was on the first occasion but I am certain it was on one of them.

Q. Did you or did you not tell Mr. Owen, yesterday, in your direct examination, that it was on the first occasion he said he would enlarge the house if it was too small? A. I cannot answer that definitely.

Q. Do you mean by that that you cannot recollect what you told Mr. Owen, yesterday? A. I do not recollect what I told Mr. Owen yesterday.

Q. In answer to Mr. Owen yesterday, did you use these words, "he said he wished us to go up to the house, that he considered us his family and that he would enlarge the house if it was too small?" A. I cannot define the two occasions. I think I said these words to Mr. Owen yesterday. Part of them were used on the first occasion. The whole of them may have been used on the first occasion. I can say on the first occasion he wanted us up to the house. On the second occasion, I can say he wanted them again and said he would enlarge the house if they desired it, but I cannot say that Mr. Murdock used the words "to make it your home" on the first or second occasions. I do not remember now more than two occasions. He also said on the first occasion he considered us his family. I think these were the very words, irrespective of occasion, he said he "wanted us to go up to the house, that he considered us his family, and that they should make his house their home" and that he would enlarge the house if they desired it. I think I said yesterday that he said we should make his house our home, if not I intended to do so. When Mr. Murdock helped me with my studies, previous to going to College, I was studying Cicero, Homer and Virgil, and Mr. Murdock helped me on several occasions with my translations.

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Q. Was this the same time he would say one day he could not see to read, and the next that he could? A. It was during August and September one day he would say he could not read and the next day that he could read, and on the days he said he could see, that he gave me the lessons. And it was during this period (August and September,) while I was getting lessons that he made these observations. I remember Mr. Charles Beamish being down in September. I do not remember seeing him but that once from the time I came home to the time I went away. I think it was the 1st day of October I left Lunenburg to go to college. It was about a week before I left that Mr. Beamish was here, it may have been less or more. He staid at Mr. Murdock's house over night. I think he staid just one night. I was there pretty late that evening. When I left the house they had not gone to bed. I heard Mr. Murdock offer Mr. Beamish his bed, that he would take the sofa. Mr. Beamish said he would sleep upstairs in the open place. I think I heard that myself. One of our family, I think father, first said that Mr. Beamish could stop over night, and Mr. Murdock then said he would give up his bed and sleep on the sofa. I did not intend to say (to Mr. McDonald) that I obtained the information from Mr. Murdock, but that I heard the conversation. Mr. Beamish took his tea there in the evening. I saw Mr. Beamish there, with Mr. Murdock in the same room, in the afternoon about 4 o'clock. I can not say I remained there from 4 o'clock in the afternoon until I left at 11 o'clock at night. I think I did remain, and I think Mr. Beamish was with Mr. Murdock during that time. I said yesterday that Mr. Murdock said he wished the house to be closed on Mr. Beamish. This was in the study, and after he heard Mr. Beamish had arrived. I do not know whether there was any person in the study but myself and father. I do not remember the conversation before Mr. Murdock said he wanted the doors closed on Mr. Beamish. Father said, "you had better see him, you had better go in and talk with him, for the sake of respect to him, if nothing else." I think Mr. Murdock replied and tried to make some excuse for not going in, cannot recollect what he said. I do not know whether my father made any reply after that. I would

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not swear father said anything after that. Mr. Beamish was in the house I think, waiting to see Mr. Murdock, at the time this conversation took place between my father and Mr. Murdock, but am not certain and could not swear that he was. I cannot recollect. I was in the room where they were talking that evening, (my father, Mr. Beamish and Mr. Murdock), about one hour or more. I do not remember what the conversation was about. Perhaps I was there the whole evening. I do not remember whether business was talked of that evening. I remember that Mr. Murdock and Mr. Beamish were alone together that afternoon. Soon after the conversation with my father, Mr. Murdock left my father to go into the room to see Mr. Beamish. Mr. Murdock indicated to me that his ankles were weak, his walk showed it. I know of no exception to his clean and neat appearance and dress.

Re-examined by Mr. Owen,—

Q. You stated on your cross-examination as follows: "It was during August and September; one day he would say he could not read, and the next day that he could read; and on the days he said he could see, that he gave me the lessons, and it was during this period (August and September), while I was getting lessons, that he made these observation;" what did you mean by the words, "during August and September?" (Mr. McDonald objected, on the ground that there is no new matter and nothing to explain. Judge refuses an explanation, there being no new matter, and, in his opinion, no ambiguity.)

Sworn to at Lunenburg, in the County of Lunenburg, the 31st day of August, A.D. 1876, before me,

CHARLES W. H. H. KAULBACK.

GEORGE T. SOLOMON,
Judge of Probate.

COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof in solemn form of law of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister-at-Law, deceased.

The examination of Ada S. Petit, of Lunenburg, in the County aforesaid, spinster, taken before me, George T. Solomon, Esquire, Judge of Probate of said County, this thirty-first day of August, A. D. 1876, who being duly sworn, deposeth and saith:

I lived at the Kaulback's about two years before the fire, and lived there up to and at the time of the fire. Mr. Murdock was in the habit of coming to the house during all the time I was there, that he was in Lunenburg. He would be there whenever the weather was fit for him to come. He took meals there. He took breakfast in the mornings, and dinner, and nearly every day tea. Such was the case during the whole time I was there. I remember the time of the fire. I know Mrs. Peck. She was at Mr. Murdock's for some time before the fire. She used to come to Mr. Kaulback's house before the fire and I would then see her, and I would see her up at Mr. Murdock's. She used to come down to Mr. Kaulback's for liquor, nothing else that I know of. She used to take liquor up to Mr. Murdock's in a jug. It would hold about two gallons I suppose. She used to take it very often about every ten days. I did not know of any person else taking liquor to Mr. Murdock beside Mrs. Peck. I never knew of Mr. Kaulback taking any liquor from the

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house to Mr. Murdock. I never saw Mr. Kaulback take liquor from the house to Mr. Murdock's or elsewhere. Mr. Kaulback complained to Mr. Murdock about the liquor, that he did not know what became of it. (I heard him.) Mr. Kaulback complained to Mrs. Peck about the liquor, he did not know what became of it. She said she did not know. Mr. Murdock, she said, had friends. I don't remember anything else. On some of those occasions before the fire, I found her in liquor. First I saw her was at the stoop or porch in front of Mr. Murdock's house, that she was quite drunk and could not stand. This was after the fire. It was during the week the Kaulbacks lived there, before Mrs. Peck left. I knew she was drunk because she could not stand. She would fall over and get up. I was standing looking at her, but had no conversation with her.

Q. How often did you see her before the fire, under the influence of liquor, when not quite drunk or in so bad a state as when you saw her on the stoop? (Objected.) A. I saw her twice or more over at Mr. Murdock's house in the house. I was there at the house and saw her take liquor out of a little pantry in Mr. Murdock's room in the study. She poured it out of the jug into a bottle, and then into a tumbler. She poured the tumbler about half full and drank it without any water. She asked me if I would have some. I told her I did not take such things as that. She was pretty near drunk that time. This was about three months before the fire (the first occasion). About a month or so after I saw her again in the house, and she was pretty nearly the same. She drank while I was there, and got the liquor out of the same room, and brought it into the kitchen. It was in a bottle. She poured it in a tumbler and drank it. She put no water in it. She said it was whiskey. I did not take any on that occasion. She asked me, and I told her no, I would not take it. Before and up to the time of the fire, Mr. Murdock was in the habit of going to Mr. Kaulback's garden. He used to come whenever the weather suited. He would sometimes sow seeds and sometimes plant something round the garden. He used to come without the Kaulbacks' sending for him. I knew, because I was there. I went to reside in Mr. Murdock's house about a week after the Kaulbacks' moved there. Mrs. Peck went away from Mr. Murdock's the day I went there. After I went there Mr. Murdock said he would not have Mrs. Peck any longer, and he would send her away. He gave as reasons that she spent his money, took away his things, and opened a letter to Miss Crowe. He said that she drank. She had taken away the silver spoons and stove and pipe. Mr. Murdock told me. I remained at Mr. Murdock's house from that time until after his decease. I am not now living with the Kaulbacks. I left in May last. I remember Mr. Murdock's being sick once, between the time of my going there and his last illness. It was somewhere about Christmas last. It was before Christmas. Mr. Murdock's general health was very good all the time I was there, except at that time, at Christmas, and his last illness. During that time he did not, to my knowledge, require any assistance in dressing and undressing. I know of no assistance having been rendered him during that time in dressing and undressing, except at times when he was ill, as I have mentioned. He was very particular and clean in his dress and appearance while I was there. He had a large garden. He took the management and control of it during the time I was there. He sowed the seed, did all the weeding and collected the seeds. There were vegetables in the garden. After collecting the seed he separated them, and put them into envelopes and labelled them. That was last fall. In the summer time he used to get up sometimes at 4 o'clock and go in the garden. I saw Mr. Murdock drink very little liquor while I was there. He would take one or two teaspoonsful and fill the tumbler up with water and sup a little at a time. I judged it was about that quantity; did not measure it. I never, after the fire or previously, saw Mr. Murdock affected by, or under the influence of liquor. I was in the habit of receiving orders and instructions from Mr. Murdock from time to time, after Mr. and Mrs. Kaulback left for Ottawa. I was in and out of Mr. Murdock's room after Mr. and Mrs. Kaulback left for Ottawa.

Q. Did Mr. Murdock, after Mr. Kaulback left for Ottawa, about the end of January, 1876, accompanied by Mrs. Kaulback, ever make any allusion, in your presence or hearing, to the disposition of his property; if so, what did he say? (Mr. McDonald objects that Murdock's statements to witness as to the disposition of his property are not evidence or pertinent to the issue.) He said he had left his property to Mrs. Kaulback and the children; that they were his best friends, and that Mr. Beamish did not care anything for him; all he wanted was his money. He told me that he made the will in the parlor or front room; that Mr. Wentzel and Mr. Solomon witnessed it. He said that if anything happened him—if he should take sick or anything, we

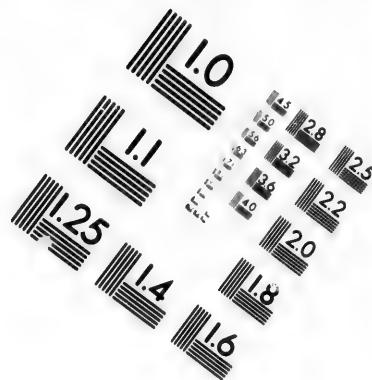
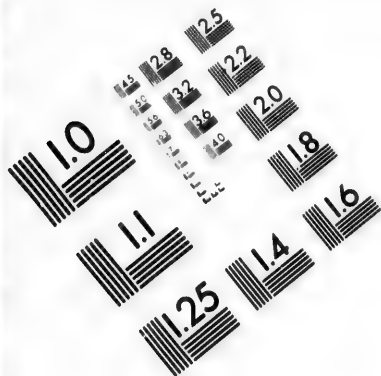
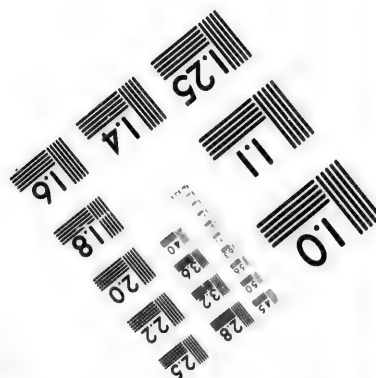
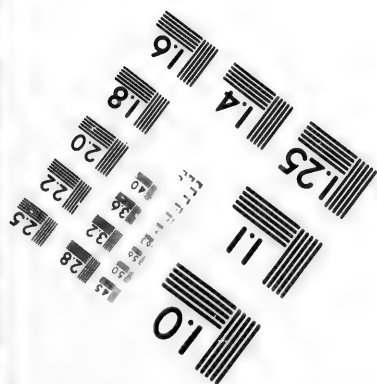
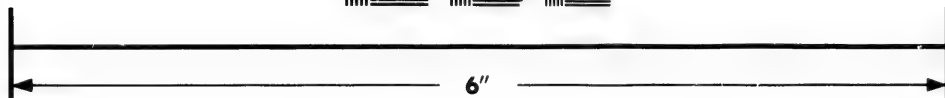
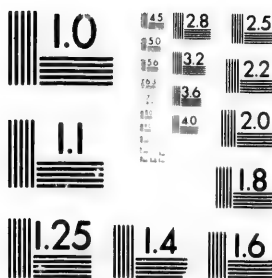


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should not send for Mr. Beamish ; that we should not let him know, because he did not want to see him. He said that when I saw him (Mr. Beamish) come, I should lock the door and should not let him in. When Mr. Murdock was sick in December, he said to me and Mr. Kaulback that we should not let the Beamishes know. He said as for Mr. Aikins, he would like to see him, but that he was too ill to come down. Mr. Kaulback and I were in the room when he said this. From the time I went there (to Mr. Murdock's) he was in the habit of offering up evening prayer. He continued that practice until he died. Mr. Murdock said that he wished to be buried at the side of Mr. Kaulback's little boy (Willie). His mind was very good from the time I went there, after the fire, up to the time of his death, except at the times of his sicknesses which I have mentioned. He had a very good memory. I never knew him to mislay anything. 7180

Q. Was he easily persuaded or self-willed ? (Mr. McDonald objects as leading. Judge rules question out.)

Q. How was he with respect to his views ? A. He was not self-willed. Mr. Murdock made Mr. Kaulback a present of his gold watch when he went away to Ottawa the last time. He always spoke of Mr. and Mrs. Kaulback and their family with respect. He treated the children very kind. He was treated very kind by Mr. and Mrs. Kaulback and the children. I was at Mr. Murdock's a couple of hours before Mrs. Peck left.

Q. Did you hear Mr. Murdock make a childish or foolish remark on the day you went to his house to live, or at any other time ? (Mr. McDonald objects on the ground that it is a leading question, and not in rebuttal of any evidence given by Petitioner.) A. No. I did not. Mr. Murdock had a very good appetite during the time I was there. There were some things he did not like. Mr. Murdock's mind and memory were very good, and he was very sensible within a very short time of his death, 7190

Q. Did Mr. Kaulback ever, to your knowledge, in any way, either directly or indirectly, attempt to influence Mr. Murdock with respect to the disposition of his property ? (Mr. McDonald objects on the same ground as before. Judge admits question.) A. No.

Cross-examined by Mr. McDonald.

I will be twenty years old next March. I had been living with Mr. Kaulback for two years before the fire, and then I was gone a few days, and lived with him after that up to last May. I was house-maid in the family. I have since then been living at Heckman's Island ; five miles from here. I have not since I left Mr. Kaulback's, last May, up to the present time, talked this matter over with anyone. I wish to correct myself by saying I meant up till lately and not up to this time. I was spoken to last May, at time of the Court, by Mr. Beamish, Mr. Weatherbe, Mr. Eizenhauer, I think. There might have been other persons, I do not remember. There was Mr. Owen and Mr. Kaulback spoke to me about it. (It was Mr. James Eizenhauer, the Merchant, I mean.) It was the first Court they had here, I cannot remember the time. Mr. Owen and Mr. Kaulback both spoke to me after I went down to the Island, when I came up to town. I came up to town of my own accord, and was not asked by Mr. Kaulback or any one else to come. I cannot say how often they spoke to me. They spoke to me of this matter in June, and I saw them to-day in the Court House. Mrs. Kaulback spoke to me on this subject, but not since I came up to give evidence. I did not talk to Charles Kaulback (who gave evidence) about it. I was at Mr. Kaulback's when Mr. Murdock first came there. He got breakfast there and dinner most every other day and tea most every day. He would come down to Mr. Kaulback's garden and stay to dinner and tea. During the time I was at Mr. Kaulback's before the fire, I saw Mr. Murdock take a very little liquor, but not often. He put in very little and filled up the tumbler with water. I passed through in the course of my duties in the house and saw him. No one told me to watch him. I was round the house all the time. When Mr. Murdock smoked at Mr. Kaulback's, he did so in Mr. Kaulback's office. I cannot say how many times I saw him drink. I never measured the quantity. 7200

Q. Did you look over his shoulder to see what he had in his tumbler ? A. No, I did not.

Q. Do you undertake to tell me on your oath, that from merely passing through the room, where gentlemen were sitting with liquor and water before them, what quantity either of them would put in his tumbler to drink, without particularly watching for that purpose ? A. I would not swear how much they would take. When I said that he would put a couple of teaspoonsful in his tumbler and fill it up with water. I meant after the fire when the Kaulback's had gone to live with him. 7220

Q. Before the fire, when drinking whiskey and water at Mr. Kaulback's house, how much whiskey would Mr. Murdock put in his tumbler? A. At the times that I saw him (before the fire) he put about two teaspoonsful in the tumbler and filled it up with water, and just sip it. He might have took it twice or so through the day. All the chance I had of observing him fill the tumbler, was when passing through the room. This was at Mr. Kaulback's. 7230

Q. Did you ever measure the quantity two teaspoonsful would make in a tumbler? A. I did not. I judged it. That was Mr. Murdock's habit all the time I knew him.

Q. What do you mean by twice or so? A. It might be once more. It could not be less than twice. Mr. James Eisenhaur was with Mr. Beamish and Mr. Beamish, as I before stated. Mr. Beamish and Mr. Weatherb brought him there to hear what was said. Mr. Eisenhaur said nothing to me of this matter. That was in May or June. I have known Mrs. Peck ever since she has been at Mr. Murdock's. I was in there twice or more. She called me in as I used to pass.

In the two years before the fire I was only three or four times in Mr. Murdock's house. I always saw Mrs. Peck when she came down to Kaulback's for liquor for Mr. Murdock, while she was living with Mr. Murdock. Shortly after she went to live with Mr. Murdock she came down to Mr. Kaulback's for liquor for Mr. Murdock. From that time up to the fire she used to come down, about every ten days, with a jug. Mr. Kaulback used to fill it for her, and she would take it away. There was nobody but Mrs. Peck took liquor from Mr. Kaulback's to Mr. Murdock's. Mr. Kaulback used to complain often to her and Mr. Murdock about the liquor. I said in my direct examination that I heard Mr. Kaulback complain to Mrs. Peck and Mr. Murdock about the liquor. He said he did not know what became of it. Mr. Murdock said he did not drink it. Mrs. Peck said Mr. Murdock had friends coming in, and she did not know who drank the liquor. I heard her say this more than once. She did not get the liquor out of the room. She got it out of the cellar. I was there more than once when she got it. Will not swear how many times. 7240 7250

Q. Do I understand you to say that Mr. Murdock came down in the morning, spent the day, drank his whiskey and water, as described by you, and consumed two gallons of whiskey every ten days besides? (Mr. Owen objects on grounds that the witness has never stated that Mr. Murdock personally consumed the two gallons of whiskey every ten days, or at any other time and that the question has a tendency to mislead the witness.) A. Well, Mrs. Peck brought it. I do not know whether she drank it or what was done with it. I said I saw Mr. Murdock pour it into the tumbler and I judged of the quantity from what he poured out of the bottle and what I then saw in the tumbler. It was during the first week Mr. Kaulback went to Mr. Murdock's that I saw Mrs. Peck drunk by the stoop. I had seen her under the influence of liquor before that. I first saw her the worse of liquor before the fire, about three months before at Mr. Murdock's. She called me in and was alone. Her daughter was not living with her that time, but I have seen her there. I saw Mrs. Peck drinking when I went in. She was the worse of liquor when I went in, before I saw her drink. I knew she was intoxicated from her words and actions. She did not exactly stagger, but could just make her way along. I smelt the liquor on her breath, before I saw her drink. She took over half a tumbler full, and told me it was whiskey. I was living at the Kaulback's then. I staid about twenty minutes. She helped herself to a drink as soon as I got in. She came to the door when I went, but could hardly get there. She did not exactly stagger, but could just make her way. I think Mr. Murdock was down at Mrs. Kaulback's that evening. I went home that evening. I mentioned to Mrs. Kaulback the state Mrs. Peck was in. Did not tell Mr. Murdock or any one else. The second time I saw Mrs. Peck under the influence of liquor was about a month before the fire. I never went in without her calling me. It is about twenty feet from the door to the gate, and she was at the gate on this second occasion. I noticed by her breath that she had been drinking. She went in and was not as bad this time. She could walk straight. She went in the room and got some liquor and took about half a tumbler again. She would drink with the biggest drunkard round the place. She took only the one drink. I stopped about half an hour. This was in the morning. Mr. Murdock was at home in his room sitting in a chair, and she went into his room and took the liquor unbeknown to him, and told me not to say any thing. She offered me some, but I did not take any. I was going up to my sisters and went in. I told Mr. Kaulback of this. I believed from what I saw that she would drink with the biggest drunkard in town. When I say from what I saw, I mean from seeing her drink the whiskey as I have described. 7260 7270 7280

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At the time she was leaning against the porch, I was in the street. I did not speak to her, nor she to me. She was lamenting and moaning and going on to herself. I stood in the road and looked at her. She would get up and fall about, and at last she got down on the stoop. This was outside on the stoop. This was during the week, before I took Mrs. Peck's place. I was staying at my sisters then, do not know how far away. I did not see any one about the house but Mrs. Peck, it was a moonlight night after dark. There was no one home I think, the Kaulback's had gone out to spend the evening. I told my sister and no one else, till after I went to Mr. Kaulback's. I was at Mr. Murdock's from a week or so after the fire until May. During that period his health was as good as at any time I knew him, except the three or four days referred to. The doctor said it was apoplexy of the brain. This was just before Christmas. He used to complain of his sight some days. I do not know of any other sickness he had. All the time was there, except on the occasion referred to, he required no nursing. I remember when Mr. Wentzell and Mr. Solomon came there. He was quite well at that time and from that time until he took sick at Christmas. 7290

Q. Reading the letter in evidence of 29th November, 1875, the witness is asked how she reconciles Murdock's statement that he had had a deadly fit of illness from which he was then gradually recovering, with her statement that he had no sickness up to that time. (Mr. Owen objects on the ground that it is not for the witness to reconcile her statement with that in the letter referred to.) A. I suppose Mr. Murdock knew his own feelings, but it was not anything I saw. He was ill with paralysis of the brain about four days. Doctor Jacobs attended him as his medical man. After the four days illness he was very smart, and by New Year's day he was as smart as ever. He had no illness from New Year that I know of up to the time at which he died. He was only ill one day. He was quite smart the day before he died. I came in while Mr. Gaetz was there the evening before he died. The illness of Christmas affected his eyesight, but after New Year's when he got over the attack his eyesight was just as good as before. On the 13th January, 1876, when Mr. Murdock wrote that card, I could not tell that Mr. Murdock was suffering from any illness or blindness whatever. I had no idea, on the 30th August, that Mr. Murdock was so seriously impaired in bodily strength and eyesight so bad that he could not see to read a book or a newspaper. I have already said that Mr. Murdock was a truthful man. 7300

Q. Which account of his health, as it stood on the several dates of August 30th, 1875, November 29th, 1875, and January 13th, 1876, namely, that given by letters of his of those dates, or by you in your evidence, was true? A. I told you what I knew about it. 7310

Q. Is that your only answer to the question I put? A. That is the only answer I can give.

Q. If your statement in your evidence with regard to Murdock's health and bodily condition be true, could Murdock have known what he was writing about when he described his health as he does in those letters referred to? (Mr. Owen objects on the following grounds: 1st—Not evidence; 2nd—Reasoning with the witness; 3rd—It is asking the witness for her opinion, and to draw inferences. Judge rules question out.) Mr. Kaulback and his wife went away in January.

Q. What time in January did Mr. Kaulback and his wife leave for Ottawa? A. It was in January, but I cannot say what day. They were about a fortnight gone before Mr. Murdock died. Mrs. Kaulback's daughter and little boy were living in the house after they left. Mr. Murdock was taking his tea in the kitchen, and was talking about Mrs. Peck; no one but me present. This was two nights before he died. He was smart as could be. It was then that he told me about the disposition of his property, as stated in my direct evidence. And it was not then that he spoke of Mr. Beamish, and told me if Charles Beamish came not to let him in, but to lock the door. He did not say Stephen, but Charles Beamish. That was the time Mr. Charles Beamish was in town here. I do not know what month it was; he was down three times. 7320

Q. Was it the time that Beamish was down in September that Murdock told you to lock the door if he came to the house. A. I do not know which time it was. I do not know whether it was 13th December that he told me. I think it was in October he told me. I did not lock the door, and Mr. Beamish came to the door and got in. I did not see him come. The door was not shut in his face, that I am aware of. 7330

Q. Did you ever hear Murdock tell any one else in that household to shut the door in Beamish's face if he came there? A. He told Mrs. Kaulback, too. I think it was at the same

time. I do not know of Mr. Murdock's having given instructions to anybody else, or at any other time than October, as referred to, to shut the door in Mr. Beamish's face. I think it was before Mr. Murdock was ill in December that he said he wished to be buried at the side of Mr. Kaulback's little boy. Mrs. and Miss Kaulback and I were present when he said this. I never heard Mr. Murdock say he mislaid anything. I was present when Mr. Murdock made Mr. Kaulback a present of the gold watch. I, Mr. Kaulback and Mr. Murdock were present. It was in the morning, in the kitchen. He took the watch out of his pocket, and chain, and handed it to Mr. Kaulback and said he would make him a present of it. That was all that passed. Mr. Kaulback said he was much obliged. 7340

He did not like fowls nor goose, nor fish. He liked beef and lamb and his vegetables. Mr. Murdock said he was going to leave me something. He told me this at the same time he said he had left everything to Mrs. Kaulback and the children. I might have spoken to my brother-in-law (Henry Nass) or his wife. I never told Henry Nass or his wife that if this Will was settled that Kaulback told me that I would get what Mr. Murdock promised to leave me. He told me before that he had left everything he had in the world to Mrs. Kaulback and the children.

Q. Have you ever told your brother-in-law, Henry Nass, or his wife, that Mr. Kaulback had told you that after this Will was settled you would get what Mr. Murdock promised to leave you, or words to that effect? A. I never said so. 7350

ADA S. PETTIT.

Sworn to at Lunenburg, in the County of Lunenburg, this 31st }
day of August, A.D. 1876, before me. }

[Signed] GEORGE T. SOLOMON,
Judge of Probate.

COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof, in solemn form, of the alleged last Will and Testament, of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister at Law, deceased. 7360

The examination of C. Edwin Kaulback, of Lunenburg, in the County aforesaid, Deputy Sheriff, taken before Mr. George T. Solomon, Esq., Judge of Probate of said County, this 27th day of October, A. D., 1876.

I reside in Lunenburg, am the Sheriff's Deputy. I knew the late Beamish Murdock. First became acquainted with him on his coming here to reside, four or five years ago. When he first came he resided at Kings Hotel, and went from there to the Moyle House; went to Halifax for a short time and on his return took up his abode in the house in which he died. I visited him occasionally at the "Moyle" House. I remember the time of Mr. Kaulback's fire, 29th July, 1875. Up to the time of that fire I was in the habit of meeting him (Mr. Murdock) at Mr. Kaulback's house. From the time of the fire, I was in the habit of meeting Mr. Murdock at his own residence about once a fortnight, sometimes once a week, but during my brother's absence more frequently still. I was in the habit of conversing with him on general topics, on the occasions of meeting him. He conversed very freely and very intelligently. I have met him in his garden on several occasions during 1875. He would be weeding, taking up flowers, moving around and taking delight in seeing things grow, and cultivating choice plants. 7370

He had his garden very nicely arranged. Considerable taste for a person of his years. I

was in his library with him frequently. He was perfectly at home there. He felt happy in having his books around him and seeing his friends come in. I don't know particularly that he referred to his books. I was in the habit of running in to see him in the summer and autumn of 1875. He then displayed as much clearness and soundness of mind as before. He always attired himself neatly and clean. I never knew him to appear in the slightest degree childish, or to do a childish act. I never saw him under the influence of liquor. I have seen him walk with an unsteady step, he'd complain of his ankles being weak. I never saw him suffering from the effects of drink, or laboring under the effects of it. He always referred to Mr. Kaulback with the greatest respect, and expressed a great attachment for the family. 7380

Shortly before his death (some two or three days previous) Mr. Murdock told me that Charles Beamish had not treated him in a manner that he would have expected, that he had treated him with the greatest amount of unkindness and ingratitude. He told me further that the visits of the Beamishes were to satisfy their own personal ends, and not from any love or affection that they had for him. He also, at that time, referred to his having been at Halifax, and said that Charles Beamish had treated him most unkindly. He did not particularize, but said that he left the Beamishes on account of their unkindness. He then also referred to his having made a will, and said that he had purposely left them (the Beamishes) nothing. He told me he had given the coins to Charlie, parts of his library to Mr. Aiken, his particular friend, that Mr. Aiken had as much of this world's goods as he required. That he had given the gold watch to my brother, and the remainder he had given to Mrs. Kaulback and the children, out of the respect he had for Mrs. Kaulback, and the affection he had for the children, or words to that effect. Mr. Kaulback was then at or on his way to Ottawa. I did not solicit the information. 7390

On the occasion of my different interviews with him, his mind seemed to be perfectly clear on every subject that he'd speak upon. His memory and intellect appeared to be as clear, keen and sharp at the time I last saw him, as when I first made his acquaintance. I never observed any difference during the interim. Have had business transactions with him on one or two occasions. He was perfectly capable of transacting business during the time of my acquaintance with him. There was not the slightest change in that respect, in my opinion, from the time of my first acquaintance to that of his last illness. From my knowledge of Mr. Murdock I believe him to have been thoroughly capable of transacting business on November 15th, 1875, and of understanding the nature of the business in which he was engaged. 7400

After the fire we were desirous of having my brother and his family come to our house. Mr. Murdock said he could manage to place them at his house, and that he would endeavor to treat them with as much kindness as he could. He seemed to have a great deal of affection for Mr. Kaulback's children. I never saw him act towards Mrs. Kaulback in any other way than with marked respect. 7410

During Mr. Kaulback's absence at Ottawa, before Mr. Murdock's death, he (Mr. Murdock) and Edna, appeared to have charge of the house. Mr. Murdock was the last in retiring. I was there then frequently and he took charge of the lights, &c.

In his conversations he was very firm in his views. During all my visits, either at Mr. Kaulback's or at Mr. Murdock's own house, I never knew Mr. Kaulback in any way, either directly or indirectly endeavoring to influence Mr. Murdock with respect to the disposition of his property.

He said, with regard to his watch, that he had given it to my brother (the Senator) by will. Don't remember whether he said he had given him the watch by will, but it was. When he was telling me of the disposition of his property by will that he said he had given him the watch. I remember meeting him out at parties and pic-nics during 1875, and frequently met him moving about town during that time. If I met him in the street I'd talk to him and perhaps walk along with him. In the spring of 1875 he accompanied a party of us to New Ross, a distance of 34 miles about. He was then in a perfect frame of mind and body. I met him at a Sunday School pic-nic this fall a year, and then found him in the same frame of mind and body. From the time of my first acquaintance with him, up to that of his last illness, he was in my opinion of perfect, sound and disposing mind and memory. 7420

Mr. Harrington objects to any evidence of "sound and disposing mind."

I have had conversation with Mr. Charles Beamish relative to Mr. Murdock, after Mr. Murdock's death, after the funeral, I think. 7430

Mr. Harrington objects to evidence of conversation.

Mr. Beamish told me that he was not surprised exactly at Mr. Murdock's speaking unkindly of them, that he, Charles Beamish, had to straggle with his feelings a little while in having to speak to Mr. Murdock, in consequence of his (Mr. Murdock's) imprudent conduct at Halifax, that it was such that Mrs. Beamish would not put up with it, and that Mrs. Beamish compelled him to speak to him plainly. He told me what it was. Mr. Beamish told me that Mr. Murdock left the house in consequence of his speaking to him.

Cross-examined by Mr. Harrington :—

I live in the western end of the town, Mr. Murdock lived in the eastern end. I visited him perhaps once a week, perhaps twice, and then perhaps not for two or three weeks. I continued this more or less up to the time of his decease. 7440

I had a business transaction with Mr. Murdock eighteen months or two years ago, about leasing a lot. He leased it intelligently. That is one of the things on which I have my opinion of his intelligence.

Sometimes, in going to Mr. Murdock's house, I'd meet Mr. Murdock there alone; sometimes I'd meet Mr. Ellis there; sometimes Dr. Jacob; and I have met Mr. Norwood there. It was a house of temperance. I have seen Mr. Murdock take his wines; I have seen him drinking. Mr. Murdock would sit down in the evening and converse. I have never seen him out of the way. I don't know that I ever smelt liquor on him. I don't think he could have drank two gallons of whiskey a week, unless he poured it into a peck. At all times that I saw Mr. Murdock, he was capable of transacting business and understanding the nature of it. I consider a childish act as something not manly. I never saw him do anything that was not manly. He was a perfect gentleman. I don't remember that I ever saw him take more than one glass at a time. I was at a picnic with him down the back harbor. Mr. Murdock was not drunk then. I never saw him drunk at any picnic, or at any other time. 7450

I have been at Mr. Murdock's house repeatedly, when there was no liquor there. My ideas with regard to Mr. Murdock's memory were gathered from interviews with him. He'd speak of things past, of historians, poets, &c. From our conversations, I inferred that his memory was good. I cannot give any particular instance or illustration of his good memory. 7460

Question.—Will you explain to the Court what you mean by disposing mind and memory?

Answer.—I state it in this way.

Question.—Are you a lawyer?

(Mr. Owen objects to this question being put until the witness is allowed to answer the one preceding, which he has been prevented doing by the examining counsel.)

Answer.—I am not a lawyer.

I define sound and disposing mind and memory to be that he was able to dispose of his ideas. I mean that he was perfectly capable of disposing of his property. I know what a disposing mind and memory is.

Question.—If a party has a delusion on one point only, has he a disposing mind and memory? 7470

(Mr. Owen objects to the question on the ground of its calling forth the opinion of the witness and in other respects illegal.)

(Judge rules out the objection.)

Answer.—It may not affect the disposition of his property. It would not, in my opinion, affect a party disposing of his property.

Question.—Do you swear that that's the law?

(Mr. Owen objects on the ground previously given to preceding question.)

Answer.—I am not a lawyer, and won't pretend to give you an opinion. My answer was a matter of opinion. 7480

Mr. Murdock showed considerable affection for the children, and respect for Mr. and Mrs. Kaulback. I never heard him say he was in love with Mrs. Kaulback. During my brother's

absence at Ottawa. I was at Mr. Murdock's every other day, perhaps. I knew he was alone, and had not my brother's company. I don't think I said to anybody that it was a shame to leave him alone, or any words to that effect. I could not have said anything of the kind. He appeared lively and in good spirits on those occasions. I would sometimes be there 10, 11 and 12 o'clock at night. This was shortly before his death; and Mr. Murdock and I would be up alone. I suppose he put the lights out, being the last up. The lights were generally burning when I left the house. With the exception of the nights I was with him, when all the others were in bed, I don't know who took charge of the lights. I did not say that Murdock put out the lights at night. I said I supposed. 7490

C. EDWIN KAULBACK.

Sworn to at Lunenburg, in the County of Lunenburg, the 27th day of October, A. D. 1876.
Before me,

GEO. T. SOLOMON,
Judge of Probate.

COURT OF WILLS AND PROBATE.

CO. LUNENBURG, SS.

In the matter of the Proof in solemn form, of the alleged last will and testament, of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister, deceased. 7500

The examination of William Burns, of Lunenburg, in the County of Lunenburg, Fisherman, taken before me, George T. Solomon, Esquire, Judge of the Court of Wills and Probate, and for granting letters of administration within the county aforesaid, this twenty-eighth day of October, A. D., 1876, who, being duly sworn, deposeseth and saith:

I reside in Lunenburg. My occupation is fishing in the Summer time mostly. I have been working on shore the last three or four years in the Winter. I knew Beamish Murdock and remember when he moved into the house in which he died. Can't tell the time exactly. I remember when he lived there. He was living there in the early part of 1875. He had a servant living with him,—Mrs. Peck. I lived across the street, right abreast of where he lived. I lived there up to December last. Mr. Murdock's garden was in view from my house. I was home from time to time Summer of 1875, and was home during the whole of the Autumn of 1875, and that Winter. 7510

It was late in the Fall of 1875 that I came home and remained,—in September, I think. I was in the habit of meeting Mr. Murdock during the times I was at home in 1875. Have seen him several times in his garden, and talked to him sometimes, and have seen him about the house and by the gate. He came up the street one day, after I gave up fishing and come home to remain. He was then taking the things out of his garden,—the seeds. He called me and asked me how I did on the banks, and I told him. He asked me if we layed to anchor on the banks, and I said yes. He asked me if it wasn't dangerous to lay there on account of ships running across to Europe, and I told him it was. (Objected to.) I said, "I believe Mrs. Peck has left you," and he said that she had, and he was glad of it; that she would have ruined him if she had stayed much longer with him. (Objected to.) I had no further conversation with him at that time. He at that time got talking about Mr. Kaulback. Said he "liked Mr. Kaulback very much," and his family, 7520

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he said, treated him very kindly. Previously to that time, I had bought a small building from Mr. Murdock. I arranged with him (Mr. Murdock) for the purchase of it. I made him a payment on it. I thought he was a very sensible man when I talked to him. I was in the habit of going over to his house. One day I was going past his house, and Mr. Murdock knocked at the window and asked me if I'd saw him some wood. I sawed it for him. Had no further conversation with him that day. I had conversations with him at other times. I was over at his house late last Fall, and paid him some money I owed him. He conversed quite sensibly with me then. He took the money from me and put it in his trunk. He counted it first. I never saw him in his garden on Sunday. (Objected to.) I saw him at work in his garden several times in the Summer, and all along in the Fall. I saw him in his garden till about a week before I moved away, (twelfth-eighth of October, I think.) It was late in the Fall when the frost got into the ground, so I must have made a mistake when I said the last of October. I knew Mrs. Peck. 7530

Question.—What were the habits of Mrs. Peck during the time she lived with Mr. Murdock in the house opposite the one in which you resided; was she temperate or intemperate?

Mr. Harrington objects to evidence of Mrs. Peck's habits, on the ground that time, place, and circumstances have not been mentioned.

Answer.—I went over to saw wood for her one day and she gave me a drink of liquor; she was not drunk or sober at that time. That was in the morning. She was generally sober in the morning. I saw her in liquor several times, and smelt liquor on her breath once or twice. I saw her sitting by the front door one day. Mr. Murdock had gone to Halifax. I was going for a bucket of water at the time. She was drunk. I saw her a number of times drunk, both after and before that, while she was living at Mr. Murdock's. After I moved away from there, I saw Mr. Murdock several times. He was quite smart at that time. I had conversation with Mr. Murdock after I moved away, (I had moved my house); and he asked me how I got it up, if all right. In all my conversations with him, he always talked very sensible. Never saw him in any way under the influence of liquor. 7540

Cross-examined by Mr. Harrington:—

I am the husband of the woman examined here last night. In the Summer 1875, I went away in April, and came home in May, and was home a week. Then went away, and returned in July, and was then home 7 or 8 days, more or less. I take a drink sometimes, not very often. I don't like it. I don't suppose any man likes it. 7550

Question.—Have you ever been drunk?

Mr. Owen objects.

Answer.—I have been drunk.

Question.—Are you in the habit of getting drunk?

Mr. Owen objects.

Answer.—Not in Lunenburg. 7560

I could see the whole of the front of Mr. Murdock's garden facing the water. I don't know what there was behind the house, but think there was not any garden. I could see a cat running about. I could not see his hen-coop from my house. There is a large piece, I think grass, that the house hides. I could see the whole of the ground in front of his house. I call the front of the house, the gable end, fronting the water. Mr. Murdock could not have been working from the gable end of the house right down, without my seeing him. He had a hen-coop back of the house. I could not see it from mine. There is room for fifty head of cattle to stand round the hen-coop without being seen from my windows. I purchased the house from Mr. Murdock last Fall a twelvemonth. I owed him some money last Fall, and paid him. I thought he was sensible, from the way in which he took the money from me. I work in a sail loft this last two or three years in the Fall. A glass of liquor was sent out to me when I sawed the wood for Mr. Murdock. Mrs. Peck gave it to me in the kitchen. I sawed it for him as a favor. He could not get anyone else. I know he was Beamish Murdock, from an agreement we had between us. I never drank more than once with Mrs. Peck. I have seen her take a drink once, I think. I liked the woman very well,—we were always very good friends. When I went through the kitchen, I would pass close to Mrs. Peck. I smelt liquor about the place in the mornings. I don't know if it came off her breath. I saw her drunk on Mr. Murdock's door step. She was sitting down. She did not say she was sick. I asked her how she was getting along, she said she didn't know 7570

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and nodded her head. She moved along the side of the house, might have been sick. She came over to my house several times well in liquor. She never came over to my place to send for liquor while I was there. I don't know that she might have been sick those other times. 7580

Re-examined by Mr. Owen:—

I could not tell where the hen-coop was situate last year when I lived there. I don't know if there was any garden back of the house last year.

WILLIAM BURNS.

Sworn to at Lunenburg, in the County of Lunenburg, the Twenty-Eighth day of October, A. D., 1876, before me,

GEORGE T. SOLOMON,
Judge of Probate.

LUNENBURG, 28th October, 1876. 7590

Court adjourned to Monday, 30th inst., at 9.30, A. M., to enable Petitioners to put in rebuttal testimony if any admissible.

LUNENBURG, Oct. 30th, 1876.

Court met at 9.30, A. M., in accordance with adjournment, for the purpose of securing rebuttal testimony, if such is admissible. No rebuttal testimony being adduced or tendered, case closed respecting the introduction of any further evidence, and adjourned to 27th November next, at 10 A. M., to hear Counsel on the part of the Petitioners, and of Respondents on the evidence adduced, and on the subject matter in dispute, and also to receive the rebuttal testimony of Mrs. William H. Morton and Mr. Charles Beamish, to be taken under Dedimus protestation, if returned within that time, and to receive any sur-rebuttal testimony the Respondents may be entitled to produce. 7600

Previously to adjournment, Mr. Owen, on behalf of Respondents, objects to a Dedimus protestatem being granted by the Court, the same being illegal, and not contemplated by Law, and also on the ground that Mr. Charles Beamish, if personally entitled to give rebuttal testimony, was bound to be personally present, and tender the same before the Court this day.

GEORGE T. SOLOMON,
Judge of Probate.

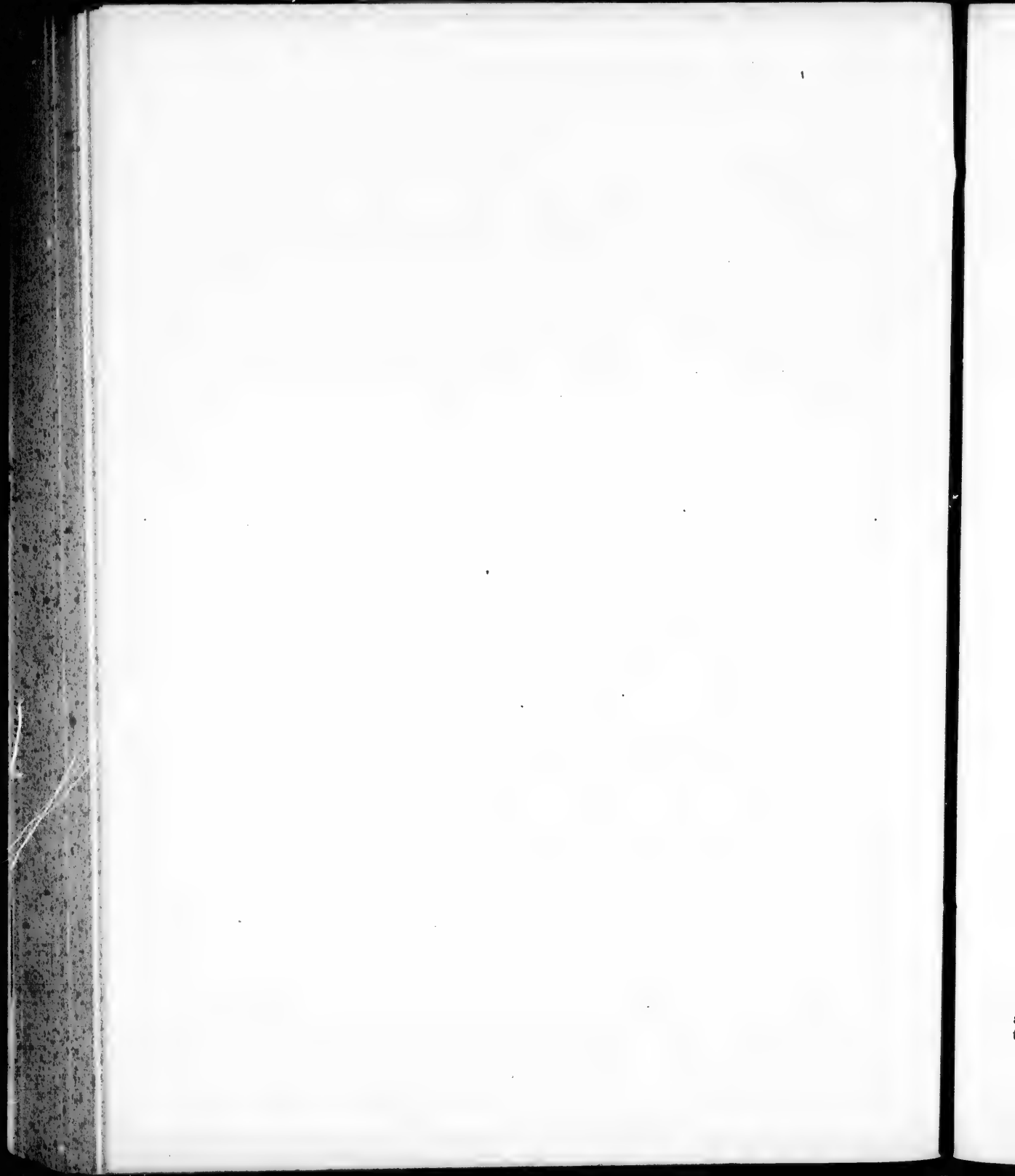
COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof in solemn form of the alleged last will and testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister, deceased, dated 15th November, A. D., 1875. 7610

The examination of Stannage James Jacobs, Esq., M. D., of Lunenburg, in the County of Lunenburg, before me, George T. Solomon, Judge of the Court of Wills and Probate, and for granting letters of administration within the County aforesaid this twenty-sixth day of October, A. D., 1876, who being duly sworn deposeth and saith:

I reside in Lunenburg. I am a medical practitioner, and received my diploma as such in



1861, and have been practising from that to the present time. I was acquainted with late Beamish Murdock. I became acquainted with him in 1872 at Lunenburg, and was acquainted with him from that time to the time of his death. He first went to King's hotel to live, in 1872. He bought a house from Senator Kaulback situated in Water street, formerly occupied by H. M. Moyle, and went to live there. After leaving that house he went to Halifax, in 1874, I think. On his return from Halifax he went to King's hotel, and then purchased another house from Senator Kaulback, in which he resided to the time of his death. When Mr. Murdock first put up at King's hotel, in 1872; I called on him professionally; he was suffering from an attack of diarrhoea from change of water and diet. I met him frequently at King's hotel previously to his going down to the Moyle House. I was in the habit of meeting him at the Moyle house, where I called two or three times a week socially. I called on Mr. Murdock at King's hotel after his return from Halifax, about 1874, and was in the habit then of calling on him socially. He had an attack of diarrhoea again in 1874 on his return from Halifax, when I was again called on professionally, from both those attacks he recovered in about 24 hours. I was in the habit of visiting him frequently, in the house in which he died, socially. He moved into the house in the fall of 1874. He died in February, 1876. I remember the time of Mr. Kaulback's fire, July 29th, 1875. In addition to the places referred to, I was in the habit of meeting Mr. Murdock at Senator Kaulback's house up to the time of the fire. I met him there frequently. My father was the family physician of Mr. Kaulback's family up to 1863, the time of his (my father's) death, since then I have been. During the time I was in the habit of meeting Mr. Murdock at Mr. Kaulback's house I was in the habit of visiting there both socially and professionally. At my different meetings with Mr. Murdock from the time I first met him up to that of his decease, we were in the habit of conversing on the topics of the day and on general subjects. Immediately after the fire Mrs. Kaulback and the children were removed to Mrs. Gaetz's house.

I was called from the fire, at which I was working, to visit Mrs. Kaulback professionally at Mrs. Gaetz's. That same morning of the fire, I met Mr. Murdock at Mrs. Gaetz's. Mrs. Gaetz, Miss Gaetz, Mrs. Kaulback, and the children and the Senator were also there, the latter in and out. During the morning I heard Mr. Murdock mention to Mr. and Mrs. Kaulback.

Question.—Was there anything said by Mr. Murdock on that occasion with respect to the Kaulbacks going to his house, and if so, what?

Mr. Harrington objects to any statement made by Mr. Murdock on that occasion.

Judge admits the question by way of rebuttal to the testimony of Mrs. Peck.

Answer.—I was in the room when Mr. Murdock came in. He said to Mrs. Kaulback, "I am sorry to see you in such distress; come up to my wig-wam and share with me my pittance, and there's a home for you as long as you wish to remain." He repeated that several times that day. They moved up to his house about a week or ten days after that. After the Kaulbacks moved into Murdock's house I continued to be their family physician. Between the time of their moving into the house and Mr. Murdock's decease I was in the habit of visiting the house three and four times a week; socially, I used to go sometimes in the mornings, sometimes in the afternoons, and sometimes in the evenings. I was in the habit of meeting Mr. Murdock there on all occasions. I was in the habit of conversing with him on these occasions. He would get up an argument sometimes on the telegrams in the "Chronicle."

Question.—Were you called upon to visit Mr. Murdock, professionally, during the time he occupied the house in which he died, if so, enumerate the different occasions?

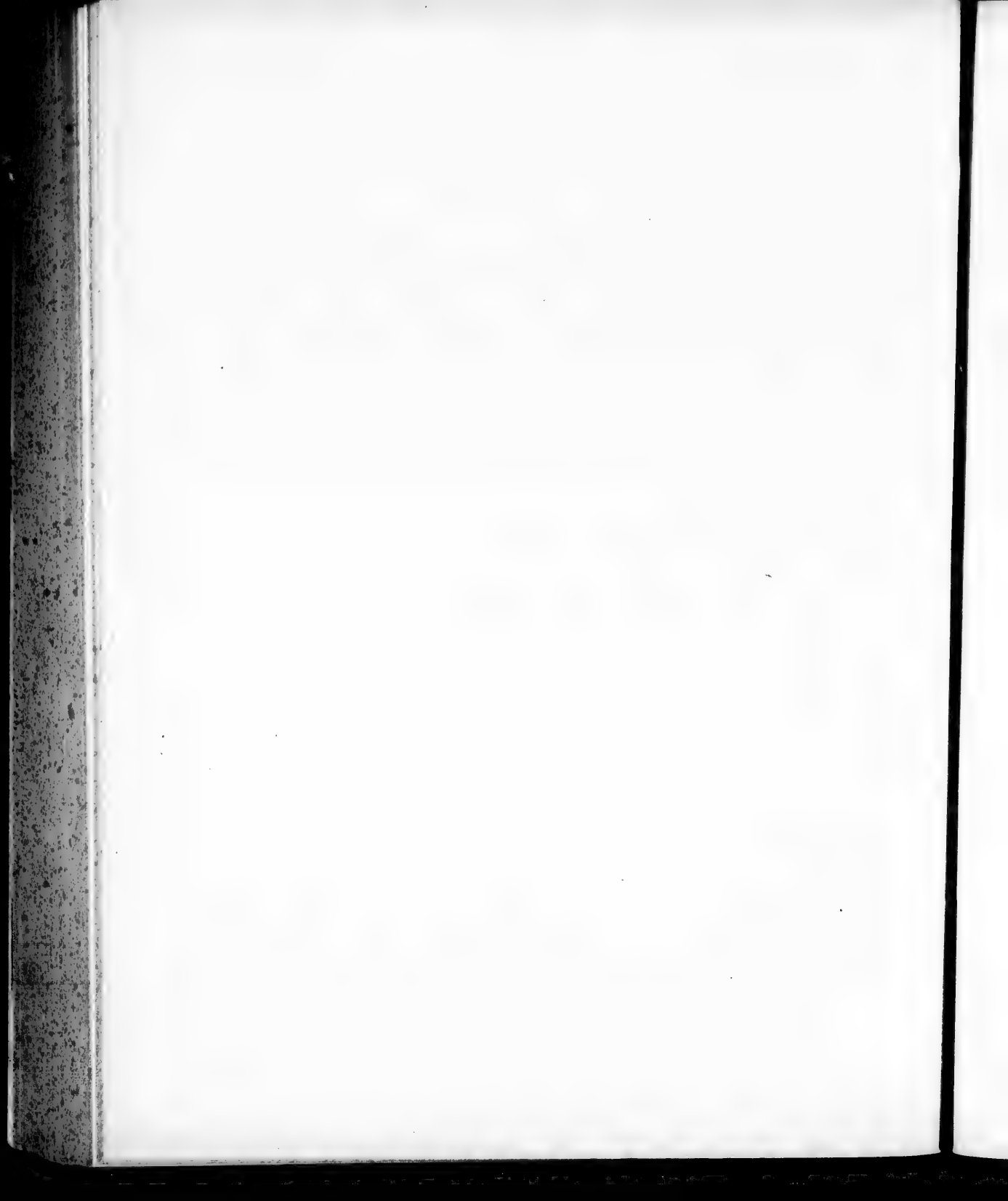
Answer.—I was called upon to visit Mr. Murdock, professionally, 15th January, 1875; fracture of two ribs. I attended him from 15th to 23rd January. On the latter date he was getting up and walking about. I was always his medical attendant from time he came, to his decease. December 4th, 1875, was my next professional visit, when I extracted two teeth for him. From January 23rd to December, 1875, he had no attack of serious illness; there were some slight attacks of diarrhoea, bronchitis and bilious attacks, but nothing of any consequence. On the 7th December, 1875, I was called to him in the evening, and found him complaining of a headache. I visited him on the 8th, and my diagnosis was, "partial paralysis of the brain;" it came on very sudden. I visited him three times on the 9th, and on the 11th, and the 12th. On the 12th I visited him twice, and he was then convalescent. I was again next called to visit him professionally, February 7th, 1876. I also visited him the 8th and 9th. I visited him three times on the 7th, and found he was attacked with congestion of the lungs. On the 9th I visited him every

two hours, and he died the 10th, at 1 o'clock, A. M. On the 12th November, 1875, I visited the house occupied by Senator Kaulback and Mr. Murdock, professionally, to see Mr. Kaulback's son Rupert. I visited Rupert again, professionally, on the 15th, and again on the 16th. I was called again on the 18th to Mary, the daughter of Senator Kaulback. On those four occasions I met Mr. Murdock at the house and entered into conversation with him on those occasions. On the morning of the 12th I came out of Mrs. Kaulback's room where Rupert was lying, and Mr. Murdock enquired of me how Rupert was. I told him he had worm fever. He asked if these were dangerous, and I told him no. I had other conversations with Mr. Murdock at that time. On the morning of 15th, when I went up to see Rupert, the first person I saw was Mr. Murdock going into his library. He said, "Rupert is much better." I went in and saw Rupert and came out into the parlor and found Mr. Murdock and Mrs. Kaulback in conversation. He was then tying up some seeds. I told him I had to leave. He was putting the seed in paper bags and labelling them. We were talking about the seed, and being in a hurry I told him I had not time to talk; bid him good morning and left. I was up on the 16th to Rupert. I always had conversation with Mr. Murdock on those occasions, on the topics of the day, &c. On the 18th I went up and saw Mary in the afternoon, and coming out saw Mr. Murdock sitting in the parlor, and from there went to his own room, the library, with him. We got talking on various subjects. He asked me if I was in a hurry. I told him I was always in a hurry. He said, "I made my will a few days ago," and then he went on relating what was in the will. He said he gave the coins to the Senator's son Charles, the gold watch to the Senator, and the rest of his property to Mrs. Kaulback and the children, and some books to his friend Dr. Aiken, Halifax. He went on to mention that he had cut the Beamishes off on account of their, especially Charles, annoying him so much; trying to get some property and some papers, and that he was so much annoyed he had cut them off to a farthing. Then he spoke about Stephen being down the last of September or October, and that worried him, annoyed him. He said he came up there (Stephen Beamish) was there a day and a night, and that he was the worse of liquor, and that he (Mr. Murdock) gave him four dollars to pay his way back to Halifax. He told me who witnessed his will. That it was Mr. Edward Solomon and James Wentzel. I then said I would have to leave and did so. I then ran in again socially the evening of the same day, and saw Mr. Murdock in his library, and had a smoke. Mr. Ellis was also there. We had conversation. I was alone with Mr. Murdock when he told me about the will. On the 20th I was called professionally to Mrs. Kaulback and saw Mr. Murdock then; he was sitting in the parlor when I came out of Mrs. Kaulback's room. I had a conversation with him, and after talking, I left him.

Mr. Murdock always spoke in the highest terms about the Senator and his wife, and especially of the children, and always had Rupert and Mary playing about him. He was very fond of them.

On the evening of 8th February, 1876, he said he would like to be buried in the Senator's piece of ground (burial ground) near the Senator's son Willie. That child died February 1874.

At gardening time, Summer of 1875, when passing there on my professional visits, to other places, I would find Mr. Murdock in his garden, superintending and giving directions to a man or woman he used to have round. He would always plant his own seeds. He had a system and method in planting. I got some information by it. I would see him off and on in the garden during the summer, weeding, and sometimes sitting in his chair smoking, and in the fall gathering up seeds and drying his squash seeds, and cleaning them and putting them in bags. Mrs. Catherine Peck was a servant to Mr. Murdock. I knew her. She was a servant with him from about the time Mr. Murdock moved into the house, up to about a fortnight or three weeks after the Kaulbacks moved there. I saw her there on different occasions when visiting Mr. Murdock. I often heard from Mr. Murdock and herself that she was hired there at three dollars a month. At the time Mr. Murdock had the broken ribs, he told me she was not worth the three dollars a month on account of her cooking, which he said was very inferior, and often told me, on that account that he'd go down to Mr. Kaulback's to get something to eat, a good dinner or a good tea. The time that Mr. Murdock broke his ribs in January, 1875, he was suffering pain and fever from the fracture, and had been suffering all the night before (of the 14th) before I had been called in, his mind was temporarily affected from this cause. When I went, found his pulse very high. Made an examination, and found his right side black, where he fell. I ordered a poultice. Mrs.



Peek said "the old man was quite delirious last night, called his vest and pants hanging up on the wall, ghosts." I said "why did you not call me last night when this happened." She said "I did not think it was so serious." I asked Mr. Murdock how it happened (the accident.) Mrs. Peek was then leaning over the foot of the bed. She said "I was going to look after the fire for the night, I felt my liquor, and I tumbled over him." She said that she fell against him, and that he fell against the stove. After the fever abated that evening, his mind became as clear as ever.

From the time I knew him, up to that of his death, except in January, when ribs broken, and in December, his physical powers were excellent, except the ankles, in which he had the rheumatism, causing a shuffling in his gait, or stiffness in the ankle joints, which prevented his walking fast.

Mr. Murdock made several allusions to Mrs. Peek drinking, and that it was impossible for him to keep her; that her cooking was so careless and filthy, and told me that she had better seek for another place. That was in August, 1875.

In conversation with Mr. Murdock about a week or a fortnight after Mrs. Peek left, he said: "I'm better situated now,—comfortably situated; and my dinner regular, and I can eat it with relish." He told me that Mrs. Peek came with two trunks and took away a waggon load. He alluded to a stove and some silver spoons which she took, which he said he would not have lost on any account, and he said he wrote to her and recovered the spoons and stove. He said he found his whiskey going rather too rapid, and that he found Mrs. Peek frequently in a state of intoxication; that was when she was living there.

When I was attending Mr. Murdock in January, 1875, I saw her (Mrs. Peek) so much under the influence of liquor, that she could not attend to Mr. Murdock. I did not see her in that state after January; but saw her so before. Mr. Murdock was particular in his food. He would not eat goose or fish, but was fond of roast beef and mutton, cabbage and vegetables. I used to see Mr. Murdock frequently when he retired. He required no assistance, but could always dress and undress himself, except the times he was in bed, when ill in January and December. He was very particular about his clothes and dress, and about his cleanliness. Such was always the case as far as I remember, on the different occasions when I saw him prepare for bed. He undressed himself and did not require or receive any assistance.

When he would come from the garden he would change his dress, his trousers, shirt, &c., without assistance. I used to see him shave and wash himself frequently; he required no one to do it for him. This was in the summer and autumn of 1875.

All the time that I knew him he was conscious of the calls of nature. He had a weakness of the bladder from youth. With the exception of those occasions, in January and December, he did not, to my knowledge, require assistance in going to bed. If such had been the case I would have been aware of it. He did not require medical assistance with the exception of those times when I was called in. During the time of Mr. Murdock's being in Lunenburg, up to the time of his death, I never saw him treat Mrs. Kaulback, or she him, but with courtesy and respect. I never found Mr. Murdock childish, or knew him to be guilty of a childish act. Always to the contrary of that. In August, 1875, after the Kaulbacks moved into the house, Mr. Murdock's health and strength was remarkably strong. I never knew Mrs. Kaulback to take whiskey. I was her medical adviser, and as such knew her habits.

Mr. Murdock was never, to my knowledge, babyish, and I never knew of its being necessary to clean him. If it had been so I would have known it. When I first became acquainted with Mr. Murdock in 1872, his mind was clear and sound. I never saw Mr. Murdock under the influence of liquor to my knowledge from 1872 to the time of his death. I ordered him three glasses of whiskey a day myself.

I ordered him half a wine glass of whiskey to a tumbler of water, and he would sit and sip that one tumbler the whole evening, and smoke in the meantime. I never saw him take a second drink. I always found him sensible. I met the Revds. Mr. Owen, Mr. Norwood and Mr. Ellis, most frequently Mr. Ellis, with Mr. Murdock and in conversation with him. He was very decided in his views, and in law arguments with Mr. Kaulback, and all questions, he was very decided, and in his arguments on religion also. He would converse with me on chemistry and on materia medica. He often said that he was almost a doctor himself; that when young he suffered from a scrofulous disease, and had so many doctors round. He would often say that

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Mrs. Kaulback and the children and Mr. Kaulback treated him with so much kindness. He could not have spoken in higher terms of Mrs. Kaulback and the children.

Question.—From your knowledge of Mr. Murdock, what was the state of his mind on the 15th of November, being the day his last will was executed?

Mr. Harrington objects.

Answer.—His mind was as clear on that day as when I first saw him in 1872. His mind on that day was sound and clear. He was that day (15) capable of understanding the business in which he was engaged. From the time that I was acquainted with Mr. Murdock in 1872, with the exception in January 1875, time of broken rib, and in December, his mind was perfectly clear and capable of doing business. I never, in any way, knew Mr. Kaulback to influence Mr. Murdock in any shape or form, either directly or indirectly. His (Mr. Murdock's) memory, from his reference to dates, &c., was very good. I saw a library at his house. In year 1875 Mr. Murdock was translating French into English, this was after his ribs were broken, about a week after. I'd see him in the evenings reading a novel and other works, a paper, the illustrated London News in the Autumn of 1875. On the morning of 15th November, when I came out of the bed room, after seeing Reupert, Mr. Murdock was reading a book. During the Autumn of 1875, I have seen him playing games, backgammon, with Mrs. Kaulback, and chess, of which he was very fond, with Mr. Kaulback. When Mr. Kaulback left for Ottawa in January 1876, Mr. Murdock was in excellent health for a man of his years. After Mr. Kaulback left, Mr. Murdock took the control of the house. 7790

Mr. and Mrs. Kaulback left on a Sunday. Mr. Murdock told me so that evening (they left.) He said he was given charge of the house, and he used to look after the fire and lights before retiring.

Cross-examined by Mr. Harrington:—

Mr. Murdock, except on the occasions referred to in my direct examination, was physically strong. Mr. Murdock has complained to me of a weakness in the bladder, but never of any other weakness in those organs. I define Priapism to be an irritation of the kidneys and urinary organs and testes. But do not think his complaint was of that description. Weakness in those parts does not approach softness of the brain. Mr. Murdock had not an affection of the spinal column. The first call to him for anything serious was the time of the broken rib. Mr. Murdock returned from Halifax in 1874, some time in October I think. I knew him as well in February, 1875, as in January, 1875. 7810

Question.—Suppose Mr. Murdock said in February, 1875, that he had been twice all but dead in five months, would that be true?

Answer.—I could not say positively.

He was not ill on the 11th February, 1875. He was not seriously ill in February. He sent to me for cough mixture during that time.

Question.—Was Mr. Murdock well for one day during the six months preceding March, 1875? 7820

Answer.—I considered him well from the time he broke his ribs up to December. In 1872, '73, '74, and part of '75, his eyesight was very good, never saw him wear specs. In April, '75, he first complained of weakness of his eyes. I do not think that in April, '75, he could have been so unwell as to fear death. There was no time during latter part of April or early part of May, that he was too unwell to write, that I remember. He could not have been so unwell as that without my knowing it. Except in January and December, I always found his memory good and sound, as far as I know. I do not know that he had any seminal weakness, he never told me he had. He mentioned to me in April, '75, a dimness in his eyes, and an itching, and I gave him a wash. 7830

He wrote up to the time of his illness, in December, 1875. He used to keep a little book, and I'd see him mark down things. I saw him on the 12th November, 1875, and other times, during that month. He had not a deadly fit of illness in November, or about that time. He could go about the house, and read, and recognize anyone in November. His sight was not then impaired; if it had been, I would have known it. I saw him on the morning of 15th November. When I came from seeing Rupert in the parlour, with a novel in his hand, reading and conversing with Mrs. Kaulback, I knew of nothing impairing his sight. Up to the time of his death, I'd

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see him marking things down in his diary. I presume he could see well enough to write accounts during that time. I most frequently met at Mr. Murdock's the Rev. Mr. Owen, Rev. Mr. Ellis, Rev. Mr. Norwood, Captain Doane, and Mr. Charles Beamish. I could not say there was much drinking there during my visit. I don't think the old gentleman drank much during the day. I would always find him sober those evenings that I'd visit there. In the mornings and afternoons, when I'd be there, I'd always found him straight. I never saw him out of the way. Now and then Mr. Kaulback would put out the whiskey. I never saw Mr. Murdock offer anybody any whiskey, while Mr. Kaulback was living in the house. Previously, several times he offered me a glass of whiskey. I have smelt liquor on Mr. Murdock. I'd never smell liquor on him in the mornings. Sometimes he'd be close enough to me for me to have smelt it on him. There were no physical marks by which I could detect that he was drinking, at any time. I have seen him in the afternoon take from a wine glass to half-a wine glass of whiskey, and fill the tumbler full of water—he never finished a tumbler while I was there—he'd sip and sip, and smoke. I once saw Beamish Murdock under the influence of liquor at a pic-nic, the 27th July, 1875. He staggered that time, but could take care of himself. It was whiskey. I never saw anyone drunk, or under the influence of liquor with him in the house. The walking was bad at the time. He did not tumble at that time of the pic-nic. The Senator was not at the pic-nic that day. I was never at another pic-nic with Mr. Murdock. Several times Mr. Murdock appeared very dissatisfied with Mr. Beamish. Mr. Murdock volunteered the statement with regard to his will. I was surprised at his doing so. At the time of his doing so, we were alone in the room. At that time he appeared unfriendly toward the Beamishes. I do not know of Mr. Kaulback giving Mr. Murdock liquor at any time.

I know Mrs. William H. Morton. I never had any conversation with her with regard to Mr. Kaulback giving Mr. Murdock drink. I don't know of Mr. Murdock acting childishly on any occasion. In December, 1875, Mr. Murdock was low in his spirits. He did not ask me to give him something to put him out of the world. I never told Mrs. Morton that he did so.

I did not say to Mrs. William H. Morton, in my house, somewhere about end of year 1875, that "Mr. Beamish Murdock was childish, that Mr. Kaulback had the old gentleman drinking, and that Mr. Kaulback knew what he was about." I do not remember having any conversation with Mrs. Morton relative to Mr. Murdock and Mr. Kaulback. I did not say at the same place or in the latter part of 1875 to Mrs. Morton, that Mr. Murdock wanted me to give him something to put him out of the world. I never heard Mr. Murdock say he was in love with Mrs. Kaulback. I never heard Mr. Kaulback say to Mr. Murdock that he wanted him to give him that watch, and I never heard Mr. Murdock refuse to give it him. The only time I ever heard anything about the watch was when Mr. Murdock told me about his will.

Question.—Did you, not earlier than December, '75, in your own house say to Mrs. Morton that Kaulback wanted Murdock to give him his gold watch?

Answer.—No.

Question.—Did you about the end of '75 and not earlier than December, in your own house, say to Mrs. Morton that Murdock said, "No, Kaulback, you won't get it." That Kaulback again insisted on having the watch, and Murdock said "No, that watch is for some one else."

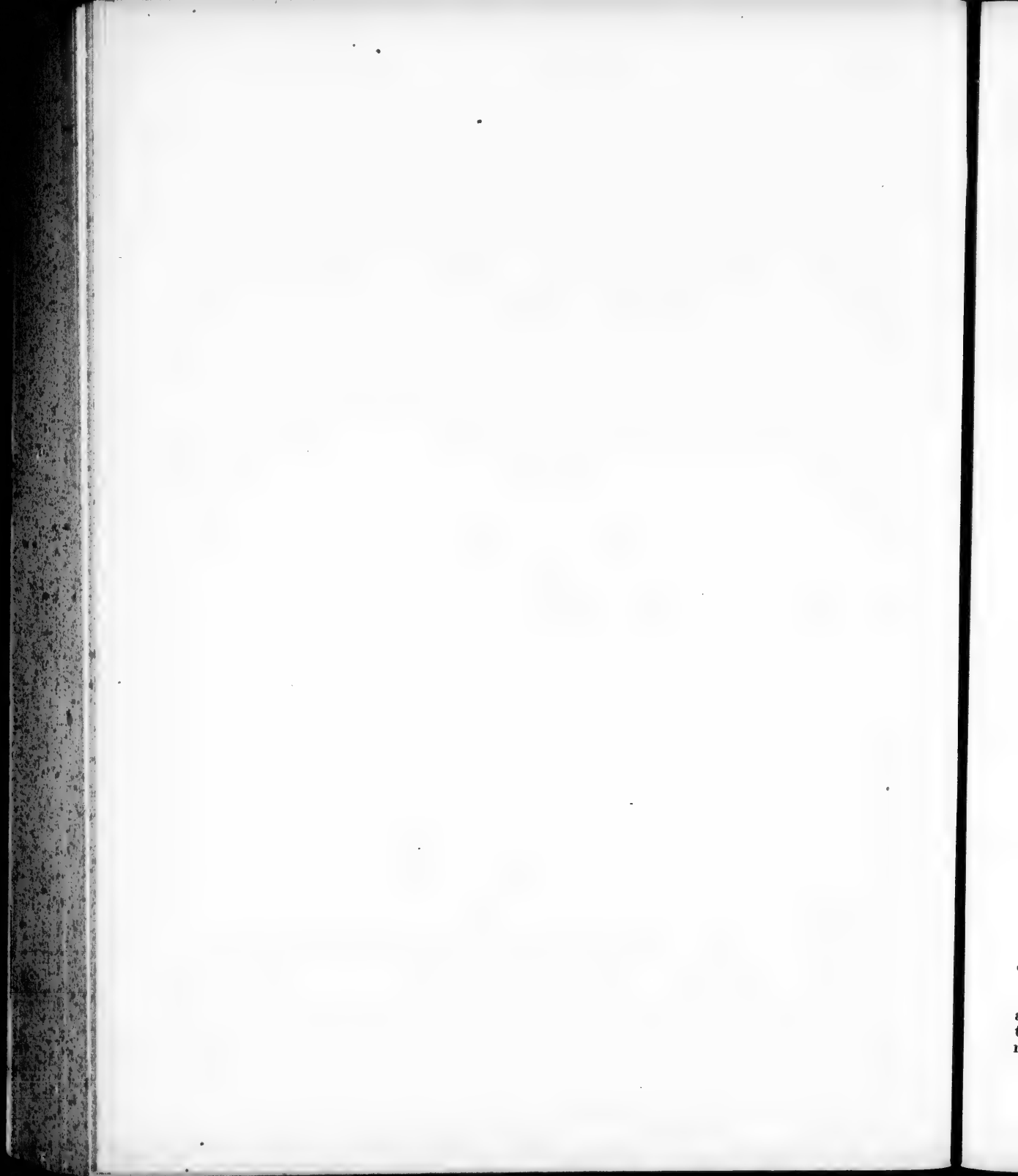
Answer.—I deny that.

After Kaulback and his wife went away to Ottawa, the Stewart's, Miss Kaulback, Mary Kaulback and Rupert, and sometimes Miss Gaetz were in the house. When they went away I thought Mr. Murdock was unusually well. I saw nothing shaky about him. Don't know of his having any deadly fit of sickness in November, if it had been so I would have known it. Stephen Beamish was here the last of September or first of October, and I saw nothing the matter with Mr. Murdock for some time after they left.

I did not, to my knowledge, say to Mrs. Morton, "It was not right to leave him with two young girls there," nor anything to that effect. I don't remember saying it to anybody. I won't swear positively that I didn't say it; I may have said it; I may have mentioned it to my wife, but have no recollection of it.

Question.—Would you have said anything of the kind to Mrs. Jacobs if he had been able to take care of himself?

Mr. Owen objects on the ground that witness has repudiated any knowledge of his having made the statement referred to, and also the ground of the counsel reasoning with the witness.



Judge admits question.

Answer.—I have no recollection of saying it. Mr. Murdock was in good health. Mr. Murdock told Mrs. Peck that he would dispense with her service when her month was up in my presence. She muttered something and walked into the kitchen. I saw Mrs. Peck drunk on several occasions. About four or five times. For four days, at the time of Mr. Murdock breaking his ribs, I saw her intoxicated or stupid. I saw her drunk once since in March. I could smell the liquor on her at the time in March, 1875, referred to. I saw her come out of the kitchen into the library and stagger. Have never seen her drunk since then, but have smelt liquor on her breath since then, in April and since April. I saw her drunk about Christmas, 1874. All I know of Mrs. Peck's drunks was on those three occasions. 7900

STANNAGE JACOBS,

Sworn to at Lunenburg, in the County of Lunenburg, the 26th day of October, A. D., 1876, before me,

GEORGE T. SOLOMON,
Judge of Probate.

COURT OF WILLS AND PROBATE,

CO. LUNENBURG, SS.

In the matter of the proof in solemn form of the alleged last will and testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister-at-Law, deceased. 7910

The examination of Edna H. Kaulback, of Lunenburg, in the County of Lunenburg, taken before me, George T. Solomon, Judge of the Court of Wills and Probate, and for granting letters of administration within the County aforesaid, this twenty-eighth day of October, A. D. 1876, who being duly sworn, deposeth and saith:—

I first became acquainted with Mr. Murdock in summer of 1872, I think. I am the daughter of Mr. Kaulback. I first met him at our own house. He was down at our house every day that it was fit for him, of his own free will and accord. Nearly every day that it was fit, he took dinner and tea at our house, and sometimes breakfast, and spent nearly every evening there. I was frequently engaged in conversation with him. Our fire happened July 29th, 1875. Mr. Murdock was in the habit of visiting our house in the way I have described, up to that time. I speak of the time I was at home. Part of that time I was at boarding-school in Halifax, about a year and a half. I was always at home during the vacations, and was at home the time of the fire and about a month immediately preceding it. My mother and father took up their abode at the Gaetz's immediately after the fire, and remained there about a week or ten days, perhaps. During that period, I met Mr. Murdock several times at the Gaetz's. 7920

Question.—Did he extend any invitation to your family, and if so, what was the nature of it?

(Harrington objects to any answer to this question.)

Answer.—He offered to come up and make his house our home. He wanted us to come up and make his house our home. Ma made some objections at first. He said he could easily enlarge the house, and that, while the enlargements were going on, he could board at King's hotel. He repeated the invitation several times, on different occasions. We decided to go at last. I did 7930

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not go until about ten days after my father and mother went. I was at my grandfather's about ten days. I took up my abode at Mr. Murdock's a few days after Mrs. Peck left, and have resided there ever since. From the time I went there to live, up to that of Mr. Murdock's death, I saw him every day. I spent much time with him. He always took his meals with us. He always said grace himself at the table. We always had evening prayer. He selected a passage, and I or ma or pa read it, and he offered an extempore prayer.

7940

During all the time I knew Mr. Murdock, up to that of his last illness, Mr. Murdock was always very particular and neat in his dress and appearance. Mr. Murdock always conversed intelligently, and was always very decided in his views, unless convinced that he was wrong. He required no nurse, except during the time of his illness, a few days before Christmas, 1875. From the time I went there, shortly after the fire, up to that of his decease, I never saw him under the influence of liquor. He would take a tablespoonful or two in a tumbler, and fill it with water, and hold conversations, and sip it a long time. He was in the habit of playing the flute and piano, and of playing chess with Pa, until he (Pa) went to Ottawa in January, 1876. Mr. Murdock had a library. He could find a book whenever he wanted it. Could put his hand upon a book, and often sent me for one when he wanted it, and told me where to find it. I always found his instructions correct. Such was the case up to the time of his decease. He was familiar with the contents of his books up to the time of his decease, he'd refer to passages contained in the works, and they were correct. I got the books and found them to be correct.

7950

Question.—Did you ever hear him refer to the Beamish's, and if so, in what way?

Mr. Harrington objects.

Answer.—That "it was through their improper conduct in Halifax that he left; all that they wanted was his money, and he didn't wish to see them when they came down." He told me this about September or October, 1875.

I remember the time of his illness in December, 1875. Pa wanted to telegraph to the Beamish's, and he said, "no, he didn't want to see any one except Mr. Aiken, and he was unable to come."

7960

He was very particular with his food. My father went to Ottawa the latter part of January last. Mr. Murdock was then very well, his health was very good. After my father and mother left, the servant girl and myself and my brother remained in the house.

After Mr. Murdock had prayers he saw that the doors were locked, and ordered the lights to be put out. He returned to his room and put his own light out. He had a garden. He was out every morning an hour or two before breakfast, and during the day if the weather would admit. After I went there, in October and November, he'd be collecting seeds and weeding; he labelled the seed, putting them in packages. Mr. Murdock helped me in my studies, in French and German, from the time I went there up to that of his decease. (Witness refers to Book "30, G. T. S.") I saw him translating that in November, 1875, and different times previously during that year. That is my own writing on the last page of this book. I read the French and he translated it, and I put it down in accordance with his translation. That was in November, after the will was made. During the year 1875 Mr. Murdock went out frequently. He went to several pic-nics. He walked out a great deal in 1875, and was also out in January, 1876. In 1875 and 1876 he walked out alone.

7970

I remember a settlement that Mr. Beamish and Mr. Murdock had on December 13th, 1875. I saw them in the room together, they were alone for some time. They had pens, paper and ink, and Mr. Murdock gave me a copy of the settlement and asked me to make duplicates of it. (The papers already filed marked "V. 1" and "V. 2," filed August 25th, 1876, placed in hands of witness.) Those are the very same papers I wrote for Mr. Murdock, as referred to. He (Mr. Murdock) said it was a final settlement between Mr. Charles Beamish and himself. They were together in the sitting room a long time alone on that occasion.

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Mr. Murdock said he wished to be buried alongside of my brother Willie, who died about a year previously. Mr. Murdock had known Willie. I saw Mr. Murdock read and write up to the time of his decease. He sometimes complained of his sight. Sometimes it was better than others. I mean by "up to time of his decease" up to January and February.

I remember one time in particular I met Mr. Murdock in the study. He was reading a paper he then held in his hand, and asked me to read it to him, stating that it was the draft of his

will. This was in November, 1875, about a week before his will was executed. He was alone in the room, and asked me to read it slowly, which I did; and as I went along he dictated some interlineations and additions, which I inserted in his presence and at his request, and read the additions with the other portions of the draft to him, of all of which he approved. He then asked me to mention nothing about it, and consequently I did not. At the time Mr. Murdock handed me the draft of the will to read, the body of it was in my father's hand writing. There might have been some interlineations in Mr. Murdock's hand writing, but I don't remember. After I had read the draft with the interlineations referred to, I handed it to him, and he looked over it and folded it up and put it in his desk. 7990

Question.—Can you state the nature of contents of any one of those interlineations, made by you; if so, state it. 8000

Mr. Harrington objects.

Answer.—I remember particularly "on her own personal and individual receipt in writing," being one of the interlineations.

Question.—Can you give the general purport of the draft referred to, with respect to the disposition by Mr. Murdock of his property; if so, state?

Mr. Harrington objects.

Answer.—I remember the relics were left to my brother Charles, and the gold watch and seal to pa, and twenty volumes of books to Mr. Aiken, which he was to select, and the rest of the property to ma, and at her death to us. That is all I remember with regard to it. I am speaking in general terms, without remembering the exact wording. I remember the Sunday evening Mr. Solomon was there in connection with the will, which was the 14th of November, the day before the will was executed, and about a week after I read the draft to Mr. Murdock. Mr. Murdock's health that day (Sunday) was good and his mind was clear as it always was. Mr. Solomon (Edward), in company with Mr. Wentzel, came to the house next day. I saw Mr. Murdock that day before and after the will was executed. His health was very good and his mind clear. He was of course capable of attending to business. I never knew Mr. Murdock to do or say anything childish. Neither my father nor any of us, to my knowledge, attempted to influence Mr. Murdock, either directly or indirectly, with respect to the disposition of his property. He couldn't be influenced. 8010

Question.—Why could he not have been influenced?

Mr. Harrington objects. 8020

Answer.—He had too strong a mind. From the time I first met Mr. Murdock, up to the time of his decease, I never saw any change in his mind, it was always the same,—clear and strong. Charlie returned from college in December, 1875, previously to, Mr. Murdock's death. Mr. Murdock instructed him in his Latin and Greek.

Cross-examined by Mr. Harrington:—

I last came back from school the 1st of July, 1875, before the fire.

I was in the habit of conversing a great deal with Mr. Murdock on general subjects,—historical and languages, French and German. I don't remember hearing any one say his mind was strong, but I knew he was decided in his views. I have been speaking with my father and Mr. Owen lately. I was asked questions by my father and Mr. Owen last evening, but was never told what to say. 8030

(Mr. Owen objects to witness being asked with respect to any questions put by her father to her, same not being evidence.)

I think my father asked me if he was sensible in his conversation, and what his conversation was generally. He did not tell me anything about Mr. Murdock being decided in his views. I said to him last evening that he was decided in his views. Never had any conversation with him before about it. I have heard them talking of his mind. Every one who conversed with him knew his mind was strong and clear. I spoke with my father this morning about the suit. He did not tell me what any one swore to yesterday or any other time. He said nothing about Mrs. Burns' or any other evidence. I don't know anything about her evidence. 8040

There was liquor in the house. I have seen it drank in the house.

Question.—By whom was the liquor drank?

(Mr. Owen objects.)

(Judge rules question out.)

I never knew him drunk, and never saw him under the influence of liquor. I was never at a pic-nic where Mr. Murdock was drunk.

In referring to books, as I have stated, Mr. Murdock would refer to passages, and tell me where to find them in the books. This was not particularly in connection with French translation. I remember the night he died. I went for the doctor myself.

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Question.—What did you say to the doctor when you went for him?

(Mr. Owen objects.)

Answer.—The doctor was with him two or three times the day before, and in the evening twice, and said he'd stay with him all night, but that his mother was sick, and he'd have to sit up with her; and that I should come for him if required. It was Dr. Jacobs. I never had any conversation with Dr. Aiken with regard to it. I don't remember exactly what I said to Dr. Jacobs. He came up with me. I don't remember saying to the Doctor the state he (Mr. Murdock) was in. I never said, either to Dr. Aiken or Dr. Jacobs that "I could not do anything with him, he was so drunk," nor anything like that. I could not have done so, as it would not have been the case. Mr. Murdock may have taken something that day, may have had a tablespoon of whiskey; he never took much.

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He had no fit of illness, that I know of, until December. He had no fit of illness the month he made his will. I considered him to be a truthful man,—never, never knew him to tell a lie, or to ask anyone to tell a lie for him. I would believe anything he said.

Question.—Did you ever tell a lie for him?

Answer.—No; not to my knowledge. He may have had a cold or slight cough through the Fall. He had not a fit of illness immediately after Stephen Beamish's visit. I wrote letters for him occasionally, (this marked "No. 2," filed August 26th, 1876, and dated November 29th, 1875, is one of them.) It is in my hand-writing. Whenever I wrote for him it was at his dictation. I wrote this letter at his dictation. I wrote the words at latter end of this letter, referring to a deadly fit of illness, at his dictation. I would not have remembered what he told me without this letter. I didn't think anything about what I was writing; just wrote what he dictated. He may have been dispondent that day; but he had not a "deadly fit of illness." That statement in the letter is not correct. He may have been induced to write in accordance with his feelings that day. I have no recollection of his being low-spirited that day. This card (marked "No. 1," "G. T. S.") dated January 13th, 1876, is in my hand-writing. I have heard him speak frequently of the unkindness of the Beamishes. He harbored illfeelings against them up to the time of his death. He harbored illfeelings towards Mr. Charles Beamish. Never heard him speak kindly towards him in his latter days. He never said he was under any obligations to Mr. Beamish. He never told me, that I remember, that he had anything to thank them for. I've heard him speak of their unkind treatment to him in Halifax, and that they only came down here to get his money. He may have asked me to write to some member of Mr. Charles Beamish's family, thanking them for kindness; but I don't remember. He asked me to write the card, but I can't remember that he asked me to write the things that are in it. I wrote it as he dictated. He was in the habit of going into his garden weeding, and so on, every day that it was fit. He may have walked through his garden on a Sunday. I think I have seen him walking there on Sunday. I did not see the last will made, but I saw Mr. Solomon and Mr. Wentzel come up on the Monday morning. Mr. Solomon was up the night before. Mr. Murdock told me when I was reading the draft, that he intended getting Mr. Solomon to copy, and I suppose he came up the Sunday evening referred to in connection with it. Of my own knowledge, I cannot say when the will was made; but from what Mr. Murdock said before, I supposed that Mr. E. Solomon and Mr. Wentzel came up on the Monday morning to see it executed. I suppose that the translation of the French book was made after the will was made, because I supposed the will was made on 15th November, when Mr. Solomon and Wentzel were there. When I read the draft he asked me to say nothing about what I had done. I did not tell any one until after his decease. Never thought anything about it, or troubled myself about it.

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To my knowledge, his memory was very good. I judge by his referring to dates and other things. I don't remember his saying his memory was bad, and that he couldn't trust it. I was

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at home in March, 1875. I always found his memory good. I found it the same in March or the winter of 1875, as at any other time.

It was about a week before the 15th November, that I made the draft of the will.

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EDNA H. KAULBACK.

Sworn to at Lunenburg, in the County of Lunenburg, the twenty-eighth day of October,
A. D. 1876. Before me,

GEO. T. SOLOMON,
Judge of Probate.

COURT OF WILLS AND PROBATE.

CO. LUNENBURG, SS.

In the matter of the proof, in solemn form of Law, of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister-at-Law, deceased.

8110

The examination of Revd. Henry L. Owen, Rector of the Parish of St. John, Lunenburg, in the County aforesaid, taken before me, George T. Solomon, Esq., Judge of Probate of said County, this twenty-seventh day of October, A. D., 1876, who being duly sworn, deposeth and saith:

I am a clergyman of the Church of England. Have been a resident of Lunenburg for 24 years as Rector. I was acquainted with the late Beamish Murdock. I first made his acquaintance about four years ago in Lunenburg. I remember his being at King's hotel when he first came to Lunenburg, and after that resided in the Moyle house. He was away the greater part of 1874, returned in the fall of that year and purchased the house in which he died. I was in the habit of visiting him in the Moyle house and also in the house in which he died. Was also in the habit of meeting him at the house of Senator Kaulback frequently.

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Mr. Kaulback's fire was about July, 1875. I know of the Kaulbacks moving into the Murdock house shortly after. Mr. Murdock was speaking of the great kindness he had received from the Kaulbacks, and said he was glad to have a home to share with them. He told me that when he first named it to them they were unwilling to come, that the house would be too small, and that he told them he would enlarge it, and that in the meantime he would board at King's hotel. From the time of the fire to Mr. Murdock's decease I was in the habit of visiting at Mr. Murdock's house about every fortnight, and was in the habit, on those occasions, of meeting Mr. Murdock. I would frequently remain an hour, sometimes longer, I was so fond of conversation with him, and would, during those times, generally be engaged in conversation with him. I often met him alone there. Sometimes my conversations with him were strictly as his clergyman, on religious subjects, and I say this as he has told me that he told the family they were to consider me as his clergyman, and whenever he was sick to send for me as such. Sometimes our conversations were on languages, sometimes on history, sometimes on his past political career. On those different occasions he conversed most intelligently. I found his memory excellent. Previously to the fire at Mr. Kaulback's I was in the habit of conversing with him on classical and literary subjects, and on religious subjects at his own house previously as well as subsequently to the fire. I have been in

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his library with him; I may say we always sat there. We would be conversing on subjects of language, or literature, or history, and he would refer readily to volumes bearing upon the subject. 8140
He had no difficulty in finding any particular book he wanted. I have frequently been in his garden both before and after the fire. In the spring of 1875, when he was putting out his seed, I was with him. I remember being there, too, at the fruit or crop gathering. I never went into the garden without Mr. Murdock. I have had conversations with him with regard to his garden, both as to how it was laid out, and with regard to the crops in it. He conversed on that subject with intelligence. When he went there, there was a ruinous building on the ground, the ground in a very rough state, a hole left by the cellar, and he had it brought into a state of good order. There was a system observed. I have seen him at work in his garden. He purchased a variety of tools and showed me his tool house. We used to exchange plants and seeds. He borrowed several books on botany from me. 8150

In conversation, I found him very decided in his views. Subsequently to the fire, I heard him frequently refer to the Kaulbacks in terms of warm sympathy; glad he had an opportunity of returning their kindness. I often saw him with the children when visiting the house. He seemed as fond of them as if they were his own.

During all my visits, I never observed any marks of disrespect between him and Mrs. Kaulback. He treated Mrs. Kaulback with respect and esteem. During all my visits, Mr. Murdock was treated with great kindness by the Kaulbacks. I have reference now both to Mr. Kaulback's house and his own. During a visit of two of the Beamish family to Mr. Murdock,—I don't remember whether they were both here together, (they were Charles and, I think, Stephen Beamish,)—he (Mr. Murdock) expressed a good deal of annoyance at their visit. Said as much as that they didn't come from any love to him, and expressed annoyance about some papers they wanted. He did not tell me what papers they were. 8160

Mr. Murdock told me he was staying at the house of Charles Beamish, and that he (Charles Beamish) came to him one morning, and said that his habits of life (the hours he kept, and the hours that they kept,) were so different from theirs, that, if he could accommodate himself elsewhere, perhaps it would be better for all. He said that Mrs. Beamish was very particular about the hours observed in the family, and that his (Mr. Murdock's) hours were so different, it made it disagreeable. Mr. Murdock made this statement sometime in 1875. I think it was on the occasion of the visit of the Beamishes referred to. There was no one present when we had this conversation. 8170

I never knew Mr. Murdock to be intoxicated, or under the influence of liquor. During my conversations with him, I found his mind very clear. In fact, I may say he seemed master of every subject we talked of. He was a man of extraordinary mind. First, with regard to the powers of mind themselves, and then with regard to the culture of them. It seemed to have been a lifelong culture. He invariably displayed great learning and ability,—was master of several languages. I never detected any change in his mind or mental powers from the time I first met him to that of his last illness.

I derived much information from my conversations with Mr. Murdock.

During all my visits, both at Mr. Kaulback's and Mr. Murdock's house, I never knew Mr. Kaulback or any of his family to influence Mr. Murdock, either directly or indirectly, with regard to the disposition of his property. I never had any reason to believe, during all my visits and intercourse with Mr. Murdock, that he was not capable of transacting business and thoroughly understanding the nature of the business in which he was engaged, except at the time of his illness in December, 1875. 8180

I remember seeing Mr. Murdock at his house about the time that Mr. Kaulback went to Ottawa, in January, 1876. I then found him as intelligent as usual. I remember the time distinctly, from the fact of his having asked me to write a postal card to Mr. Kaulback at Ottawa, and a note to Mrs. Kaulback at St. John. The note was at his dictation, the postal card at my own. I found Mr. Murdock very intelligent at that time, his body weak. His object in getting me to write was to let them know that he was getting on comfortably. 8190

I never saw Mr. Murdock otherwise than very neat in dress and appearance. Mr. Murdock

used to complain sometimes, during the latter half of last year, that his sight was weak. I can't say that I saw him read during that time, because generally my object was to read to him. I have no reason to know or believe he was not able to read at any time.

Cross-examined by Mr. Harrington :—

After his return from Halifax in 1874 (in the Fall of that year), I became most familiar with him. In visiting at his house I did not often meet other persons there. Have met Dr. Jacobs there several times during Mr. Murdock's sickness in December. I may have met Mr. Ellis there. I remember once, but do not remember more frequently. I have also met Mr. Charles Beamish there. Have never met Mr. Norwood there. I have seen liquor (rye whiskey) there during my visits. It was in a decanter. I have seen Mr. Murdock imbibe. He used to pour a small quantity of liquor into a tumbler and fill it up with water, and would sip it. I never sat out one tumbler. Have never seen him drink a whole tumbler of that mixture. Sometimes when I've gone there this liquor has been standing on the table. I have never seen Mr. Murdock produce it.

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I remember seeing Mr. Murdock at a Sunday-school picnic.

I have met Mr. Murdock several times at Mr. Kaulback's house, and also in the street. In walking, he had a stumbling gait, but I never gathered the impression that he had been drinking. His memory was excellent, with regard to history and his past political life. I saw no change in his memory.

8210

Question.—Can you account for Mr. Murdock having stated of his own memory, "that he couldn't trust it."

(Mr. Owen objects on the ground that there is no evidence of Mr. Murdock ever having made any such statement. 2d, That it is reasoning with the witness. 3d, That the witness is not here in the position of an expert, for the purpose of answering any such question.)

Answer.—He never made such a statement to me.

In the spring of 1875, I think, Mr. Murdock fell and injured his ribs. I did not, at that time or at any other time, except during his sickness in December, observe any defect in his memory. I recollect the occasion of Stephen Beamish's visit. I am not aware that after that visit Mr. Murdock had any physical illness until December. I have no recollection of Mr. Murdock's having been taken with a deadly fit of illness between the time of Stephen Beamish's visit 29th November. He complained of the visits of both Stephen and Charles Beamish. I have never seen Mr. Murdock in company with any one who was drunk. When Mr. Murdock asked me to write the note and card he was reclining on the sofa, and did not then complain of his sight. As far as I know he was strong enough to write, and was so to the Saturday before his death, except during his illness in December. The Saturday before his death, to show that I had no idea of his being so near his end, I was reading to him a book—"The Last Days of a Philosopher," by Sir Humphrey David, and left it with him to read.

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HENRY L. OWEN.

Sworn to at Lunenburg, in the County of Lunenburg, the twenty-seventh day of October, 8230
A. D. 1876.

Before me,

GEORGE T. SOLOMON,

Judge of Probate.

COURT OF WILLS AND PROBATE.

CO. LUNENBURG. SS.

In the matter of the proof, in solemn form, of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister, deceased.

The examination of Anna Burn, of Lunenburg, in the County of Lunenburg, taken before me, George T. Solomon, Esquire, Judge of the Court of Wills and Probate, and for granting letters of Administration within the County aforesaid, this 27th day of October, A.D., 1876; who being 8240
duly sworn, deposeth and saith:

I lived just across the street from Mr. Murdock's house, up to November last, when I moved a short distance away. I was living across from Mr. Murdock's all the time he was living in that house, previously to November, 1875. My husband lived there with me. Mr. Murdock was my nearest neighbor. Mrs. Peck was living at Mr. Murdock's house from the time he moved into it up to a short time after Mr. Kaulback's fire. I saw Mr. Murdock almost every day up to the last November, 1875, when I left there. I entered into conversation with Mr. Murdock several times. Found him very sensible. Every day, when it was nice to work in, he'd be in his garden, up to the time he took the things out of the garden in Fall of 1875. I know Mrs. Peck. 8250
During all the time I knew Mr. Murdock, I never knew him to be affected by liquor. I was frequently at his house up to November, 1875; was over about twice a day, got nearly all my water there.

Question.—If you did not see Mr. Murdock, did you see Mrs. Peck under the influence of liquor?

Mr. Harrington objects, that Mrs. Peck's drunkenness or sobriety has nothing to do with the issue of this case; also, that this question is leading.

Answer.—Mrs. Peck was in the habit of drinking during the whole time she was living in Mr. Murdock's house. I used to, often, see her staggering about the street, and I smelt it on her. I often saw her in a drunken state when I went over to the house for water. I never saw her drinking liquor in the house. One evening, after Mr. Kaulback's fire, she was sitting on the stoop, so drunk that she couldn't move. The night the fire was, the street wasn't wide enough for her. 8260

Question.—Did Mrs. Peck make any statement to you relative to this matter in dispute, if so, when and where?

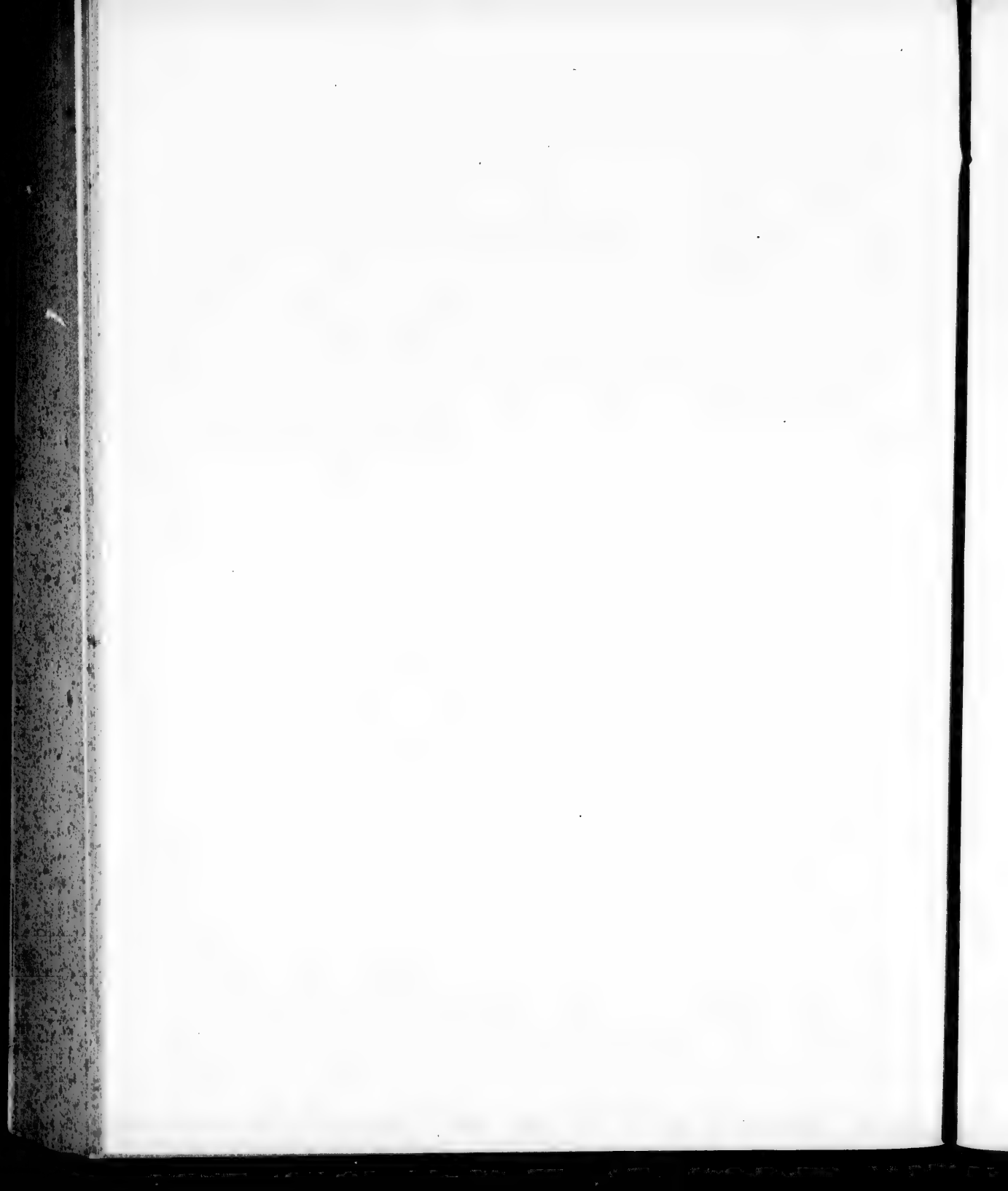
Mr. Harrington objects.

Judge rules question out.

Mr. Murdock dressed very tidy and looked very clean and neat. I never saw Mr. Murdock working in his garden on Sunday, and I could look right across into his garden, and if he had been working there I could have seen him.

Cross-examined by Mr. Harrington:—

The last of last November I moved down into the lower street. Mrs. Peck is an ugly natured woman, treats people uncivilly. She said something uncivil to me often when I went there for water. She refused me getting water there. Mr. Murdock told me I could have it as long as there was two buckets full in the well. There was a row, it was all Mrs. Peck's fault. I never had much to say to her after that; but she used to be in my house three or four times a week after that, but I did not go to her. The disturbance took place in June. We talked when she came to my house. We got along pretty well after that. I used to speak to her when she came to the house, and when I met her in the cellar. We had no flare up after that. I did not associate with her when I found she was a drunkard, but when she talked to me I had to speak to her. I saw 8270



Mrs. Peck the morning of the fire about 2 in the morning; she went down as far as Dr. Aitkens', and turned and staggered home again. The house was burning at this time, and the alarm of fire had been given. I asked her what place it was burning, she said she didn't know, that the whole town was a-fire. I was going down to look at the fire. I smelt the liquor on her. This was in August, I think. The fire made it light. I was near my own house, had come out of the door, and she was half across the street. I went up close to her. When I spoke to her I was on the sidewalk and Mrs. Peck was in the middle of the street. She then went the same street I did. She staggered along; I went straight along on the sidewalk. Sometimes she staggered over against me on the sidewalk. She used to send for jugs and bottles enough; she used to send my boy. The jugs held about a gallon. Can't tell how often the boy went. He went as often as once a week with the jug, and very often for bottles. She did this all the time she staid at Mr. Murdock's. The boy got the liquor at Mrs. Metzler's, I think. I did not stop the boy from going, because he went her errands. 8280

Question.—Did you try to stop your boy from going for the liquor?

Mr. Owen objects.

Judge rules the question out.

He is a pretty large boy. The night of the fire I walked close alongside of her sometimes. She used to go over and over the street. Her clothes and breath smelt after liquor. After she said the whole town was burning, she went down as far as Dr. Aitkens', and then turned and went back again.

I could not have helped seeing Mr. Murdock in his garden, if he had been there, on Sundays. He always went down to Mr. Kaulback's on Sundays. I could see all the garden, except where the hens' coop was, and outside the coop where they walk. I always saw him week-days in the lower garden. I usually occupied the south room of the house, nearest Mr. Murdock's. I will not swear there was not a little bit of the garden I could not see. The kitchen was on both sides of the house. I don't know how much of the garden there might have been that I couldn't see. 8300

Re-examined by Mr. Owen:—

Question.—You stated in your cross-examination that you thought your boy got liquor at Mrs. Metzler's for Mrs. Peck. Do you know, of your own knowledge, that such was the case?

Mr. Harrington objects.

Answer.—I do not know it of my own knowledge. 8310

Question.—Do you know, of your own knowledge, that the jugs or bottles, referred to by you, contained liquor?

Mr. Harrington objects.

Answer.—I don't know of my own knowledge, only what the boy said.

ANNA X BURN.

Sworn to at Lunenburg, in the County of Lunenburg, the 27th day of October, A. D., 1876. Before me. Being first read and explained.

GEO. T. SOLOMON,
Judge of Probate.

COURT OF WILLS AND PROBATE.

8320

COUNTY OF LUNENBURG, SS.

In the matter of the Proof, in solemn form, of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister, deceased.

The examination of Catherine Peck, of Lunenburg, in the County of Lunenburg, taken before me, George T. Solomon, Esquire, Judge of the Court of Wills and Probate, and for granting letters of Administration, within the County aforesaid, this 27th day of November, A. D., 1876, who being duly sworn, depose and saith:

Question.—Mr. Kaulback has sworn in his examination, to the following words: "Yes, I have seen her in that state that she couldn't move. I saw her twice helplessly drunk; once in the day she was lying in Mr. Murdock's room on the bed (about two o'clock in the afternoon) in the Autumn of 1874 (about December, or a month or six weeks after Mr. Murdock moved in the house.) I saw her at another time, about three weeks after that. I saw her helplessly drunk again lying on the floor in the kitchen,"—is that true or is it false.

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Mr. Owen objects, on the ground that it is not relevant to the issue, or new matter, or subject matter, for rebuttal, witness having previously stated on her cross and re-examination that she was not drunk, or words to that effect.

Answer.—I was not drunk; he never saw me in that state. I never laid on the floor drunk, nor he never saw me in any other place drunk; its a false lie. Mr. Kaulback may have been tight himself, and couldn't see whether I was tight. (Taken under protest and objections by W. H. Owen.)

8340

Question.—Mr. Kaulback further said in his direct examination: "But I have seen her on other occasions, that she could not do her ordinary work about the house from the effects of liquor. Have seen her half drunk frequently, so that she could just toddle along, at different times, from the time she first went up there to when she was discharged,"—is that true, or is it not?

Mr. Owen reiterates the objections made to the preceding question.

Answer.—It is not true.

Question.—Did you about Christmas, 1874, in Mr. Murdock's house, in presence of Mr. Murdock and Mr. Kaulback, open a small jug of whiskey, brought up by Mr. Kaulback and Mr. Murdock, take the cork out and fill a tumbler three parts full, and drink it, saying it was very good?

8350

Mr. Owen renews objections.

Answer.—I did not, sir.

Question.—Did you upon five or six occasions carry liquor from Mr. Kaulback's house up to Mr. Murdock's, in about a two-gallon jug.

Objected to as previously.

Answer.—I say it's not true, sir.

Question.—Mr. Kaulback, in referring to a letter that Mr. Murdock had written to Miss Crowe, said: "That she followed me and said, 'I want to show you something,' and urged my return. I did not go back; but the following evening, or the next after that, I went up to Mr. Murdock's again, and as I was leaving, Mrs. Peck stopped me and asked me to come into the kitchen. I did so. She had an envelope in one hand and a note in the other. She said to me, 'read that.' I glanced at it and asked her where she got it from. She told me that Mr. Murdock had given it to her to mail, and she had opened it. I censured her for having opened that letter, and told her she had done a very wrong thing; and she begged me to say nothing about it. I looked at the envelope; it was torn so that it could not be put in again, and she tore it, (the letter and envelope) in half a dozen pieces, and threw it in the cooking stove,"—is that so, or is it not?

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Answer.—It is not so, sir.

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Question.—Mr. Kaulback further said: "Besides Mrs. Peck, during the time she was in the house after I got there," (question withdrawn.)

Question.—Did Mr. Kaulback ever complain to you, in his own house, of the quantity of liquor which was going up to Mr. Murdock's? 8370

Answer.—I can't say. Not to my memory.

Cross-examined by Mr. Owen:—

When I wanted whiskey, I asked Mr. Murdock for it.

Question.—When Mr. Murdock wasn't home, and you wanted it, were you not in the habit of taking it without asking?

Answer.—I'd be a deuced fool to tell you if I did. I had the privilege of taking it when I wanted it, whether Mr. Murdock was there or not. I did not take it unless I wanted it. I had the privilege of taking anything else I wanted of Mr. Murdock, whether to eat or drink.

Question.—Have you always been willing to come here at any time and give your evidence? 8380

Mr. Ross objects, being irrelevant.

Answer.—I never refused; I was always willing to come.

I am a legatee under a former will; there was fifty pounds left me.

Question.—Were you in the habit of measuring your drinks, or did you sometimes take more than at others?

Mr. Ross objects, being a question to mislead the witness, and the inference to be drawn from answer would be an erroneous one.

Answer.—I won't answer the question. It's no use to ask me about whiskey or anything else. I've said all I got to say. 8390

Question.—If you had been asked to have attended here to have given evidence on part of petitioners, on 30th October last, would you have attended for that purpose?

Mr. Ross objects.

Answer.—Of course I would have come, but I wasn't asked.

CATHERINE PECK.

Sworn to at Lunenburg, in the County of Lunenburg, the 27th day of November, 1876, before me,

GEORGE T. SOLOMON,
Judge of Probate.

COURT OF PROBATE.

8400

CO. LUNENBURG, SS.

To William Howe, of the City of Halifax, in the County of Halifax, Barrister-at-Law and Registrar of the Court of Probate for said county, Greeting.

Whereas the last will and testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Queen's Counsel, Doctor of Civil Law, and bearing date on the fifteenth day of November, in the year of Our Lord one thousand eight hundred and seventy-five, is now under proof in solemn form, in said Court, and the validity thereof contested by Charles Beamish and Henrietta James, parties interested in the estate of the deceased, under a former will of the said Beamish Murdock; and whereas Stannage Jacobs, of Lunenburg, in the County aforesaid, M. D.,

a witness on behalf of respondents, did on the twenty-sixth day of October, instant, in the said Court, before me, at Lunenburg aforesaid, on the cross-examination of him, the said Stannage Jacobs, by Sydney Harrington, Esq., on behalf of said petitioners, state as follows: "I know Mrs. William H. Morton. I never had any conversation with her with regard to Mr. Kaulback giving Mr. Murdock drink. I don't know of Mr. Murdock acting childishly on any occasion. In December, 1875, Mr. Murdock was low in his spirits. He did not ask me to give him something to put him out of the world. I never told Mrs. Morton that he did. I did not say to Mrs. William H. Morton in my own house somewhere about the end of the year 1875, that Mr. Beamish Murdock was childish; that Mr. Kaulback had the old gentleman drinking, and that Mr. Kaulback knew what he was about." I do not remember having any conversation with Mrs. Morton relative to Mr. Murdock and Mrs. Kaulback. I did not say at the same place or in the latter part of 1875, to Mrs. Morton that Mr. Murdock wanted me to give him something to put him out of the world. I never heard Mr. Murdock say he was in love with Mrs. Kaulback. I never heard Mr. Kaulback say to Mr. Murdock that he wanted him to give him that watch, and I never heard Mr. Murdock refuse to give him it. The only time I ever heard anything about the watch was when Mr. Murdock told me about his will. 8410

Question.—Did you not earlier than December, 1875, in your own house, say to Mrs. Morton, that Kaulback wanted Murdock to give him his gold watch? 8420

Answer.—No.

Question.—Did you on about the end of 1875, and not earlier than December, in your own house, say to Mrs. Morton, that Murdock said, "No, Kaulback, you won't get it." That Kaulback again insisted on having the watch, and Murdock said "No, that watch is for some one else?" 8430

Answer.—I deny that. I did not, to my knowledge, say to Mrs. Morton, "It was not right to leave him with two young girls there," nor anything to that effect. I don't remember saying it to anybody. I won't swear positively that I did not say it. I may have said it. I may have mentioned it to my wife, but have no recollection of it.

And whereas the said petitioners by their counsel pray that the deposition of Mrs. William H. Morton, who resides at present in Halifax, as set forth in the affidavit of Sydney Harrington, one of the counsel of said petitioners, may be taken before some person duly authorized by *dedimus potestatem*, granted by me, the Judge of said Court, touching the matter aforesaid; and also that the deposition of Charles Beamish, who also resides at Halifax, may be taken solely for the purpose of rebutting testimony, given with reference to certain statements alleged to have been made by him, as to the way in which said Murdock left Halifax. I do therefore, by virtue of the power and authority in me vested, authorize and empower you, the said William Howe, to take the deposition of the said Mrs. William H. Morton, confining said deposition or evidence solely, to such rebuttal testimony as is legally admissible to rebut the said evidence hereinbefore mentioned, and given by the said Stannage Jacobs, on said cross-examination. And also to take the deposition of the said Charles Beamish, in rebuttal of testimony given solely with reference to statements alleged to have been made by him as to the way in which said Murdock left Halifax. And I do hereby authorize and empower the said respondents, by their counsel, to cross-examine the said Mrs. William H. Morton and Charles Beamish, and that petitioners or their counsel do give respondents or their counsel at least ten days' notice of the time and place named by them for taking such deposition. And the said depositions, when taken together, with this warrant, you will return to this Court on or before the twenty-seventh day of November next ensuing, the date hereof. 8440 8450

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Lunenburg, in the County aforesaid, this thirtieth day of October, A. D., 1876.

(L. S.)

GEORGE T. SOLOMON, *Judge of Probate.*

The execution of the within writ will appear by the paper writings annexed, marked A and B, being depositions of Agnes T. Morton and Charles Beamish, taken by and before me this day.

Halifax, November 25th, 1876.

WILLIAM HOWE, *Registrar.*

8460

COURT OF PROBATE.

LUNENBURG, SS.

In the matter of the will and estate of Beamish Murdock, formerly of Halifax, County of Halifax, Esquire, Q. C., &c., but last of Lunenburg, in said County, where he died.

Witnesses examined at Halifax, N. S., under writ of dedimus from said Court of Probate, Lunenburg, addressed to William Howe, Esq., Registrar of Court of Probate, at Halifax, no persons appearing to cross-examine.

Agnes S. Morton, called on behalf of Petitioners, being sworn, deposes as follows:—

8470

Examined by Mr. C. S. Harrington.

I am the wife of Wm. H. Morton. I resided at one time in Lunenburg. I know Dr. Stanrage Jacobs. I am his cousin. I was in the habit of being in his house visiting every evening after tea, for the last two years. I have had conversations with him with regard to Mr. Henry Kaulback giving drinks to Beamish Murdock. I had such conversation with him in his own house about the end of 1875. We were talking about Mr. Murdock. I was not then aware of any will. Dr. Jacobs said Mr. Murdock was childish. He said Mr. Kaulback had him drinking and nodding his head. He said Kaulback knew what he was about. About the same time of that year and at the same place he said Mr. Murdock wished him to give him something to put him out of the world. I had another conversation with Dr. Jacobs about Mr. Murdock's gold watch. The Dr. said that he was present when Henry Kaulback said to Mr. Murdock, "Murdock you must give me that gold watch," and that Mr. Murdock said "No, Mr. Kaulback;" that Kaulback said, "Oh you must give me that watch;" Mr. Murdock replied, "Oh, no, Kaulback; I have got that for somebody else." At another time Dr. Jacobs said it was not right to leave two young girls with Mr. Murdock, that is to take charge of him. He thought it should be an elderly person as Mr. Murdock was not able to wait on himself. This is all I recollect, except that this last conversation was in Dr. Jacobs' house and somewhere about the end of 1875. I moved from Lunenburg to Halifax about 16th October last.

8480

A. S. MORTON.

Sworn to at Halifax, this 25th day of November, A. D. 1875, before me, under and by virtue of Writ of Dedimus to me directed by the Court of Probate, for County of Lunenburg.

8490

WILLIAM HOWE, Q. C.,

Reg. Court Probate, County of Halifax, N. S.

Charles Beamish, one of Petitioners, being sworn, deposes and says:—

(Examined by Mr. C. S. Harrington.)

I am one of the Petitioners in this matter. I know Edwin Kaulback; he is a brother of Henry Kaulback I think, I am not sure. I have had one conversation with Mr. Edwin Kaulback at King's Hotel, in Lunenburg, about Mr. Murdock and his will. I had asked him to meet me there to open and read a former will of Mr. Murdock's. A general conversation took place about Mr. Murdock and the will I am now contending for. The conversation took place in the evening of the day of Mr. Murdock's funeral. I did not say to Mr. Edwin Kaulback then or at any other time that I was not surprised that Mr. Murdock was annoyed with me and my family. I did not say that Mr. Murdock had to leave Halifax in consequence of either myself or my wife telling him he could not remain at our house. I didn't say that I had any reason to suppose that Mr. Murdock bore any ill will to myself or any member of my family. I did say to Mr. Edwin Kaul-

8500

back that on one occasion in 1874, when Mr. Murdock came to my house from Lunenburg in the evening, I remonstrated with him for some familiarity with my servant girl at the front door as she opened the door for him. He was then intoxicated. I never said and I emphatically deny that I said to Mr. Edwin Kaulback that any ill feeling had sprung up between me and Mr. Murdock. I deny that Mr. Murdock left my house in consequence of either myself or my wife saying that he could not remain there. 8510

C. BEAMISH.

Sworn to at Halifax, this 25th day of November, A. D. 1876, before me, and by virtue of Writ of Dedimus hereto annexed.

WILLIAM HOWE,
Registrar, &c.

Mr. C. Sydney Harrington acting for Petitioners here tenders evidence by Mr. Beamish and others, to rebut testimony given by and on behalf of respondents. He claims that it should be admitted in accordance with an affidavit which he alleges to be on file in the Registry at Lunenburg, and contends that it is unjust that the evidence should be excluded, and he believes said evidence to be legally admissible. 8520

I consider I have no authority under the Dedimus to receive such further evidence, and therefore reject Mr. Harrington's application.

W. HOWE, *Registrar, &c.*

Received 30th November, 1876, 7½ o'clock, P. M., and filed subject to protest and affidavit filed by W. H. Owen, Proctor for Respondents, and to his objections for illegality and want of notice, &c.

G. T. S.

Not received in evidence for reason set forth in W. H. Owen's affidavit, dated 27th November, 1876. 8530

G. T. S.

No. 2. G. T. S.

LUNENBURG, Saturday, 12th December, 1874.

My Dear Charles,—

I telegraphed to you in consequence of not hearing from you for a week after I wrote. But I got your letter next day, which set things all right.

But I got your letter of the 10th December yesterday. Please keep the deposit receipt for the 7,000 dollars until the 30 days notice expires, and then send me the \$400 and the deposit receipt per mail. I notice by the Almanac that no one Post Office Order can be issued for more than \$100, so I thought the safest way was to send me four such orders. 8540

If it is not giving you too much trouble, I would like you to buy me three red cabbages and tie them with a string of twine and a card, and put them aboard the packet or steamer, directed to me. I cannot get a red cabbage in this County. If you could buy me a few pounds of *maccaroni*, it is a kind of thing made of flour, larger than vermicelli; and a few pounds of Halifax sausages, they would be very acceptable, and I can repay you the cost, a small raisin box would hold them easily.

There is another thing would oblige me, and that is half-a dollars worth of the thin square cakes of cut tobacco, which Sandy McLeod in Hollis street used to sell.

When I am in Halifax, I forget half the things I intended to get, and I do not feel equal to another voyage thither for some time.

If I could get some West India limes for pickles, I should be glad.

Love to Mrs. B., to Minnie, and Miss Henrietta.

I am now settled in my new (old) house very comfortably.

Ever yours truly,

(Sd.)

BEAMISH MURDOCK.

8550

No. 3. G. T. S.

LUNENBURG, 30th Dec., 1874.

My dear Charles,—

I got the maccaroni and other things you shipped me all safe.

I have written again to Miss Norris, and hope to have her reply shortly, when I will enclose it to you.

I should have written sometime since, but I have suffered intense weakness, although partly recovered, from my long-lasting cough.

If you should be passing W. S. Hall's Book Store, Stationer's Hall, Hollis Street, I would be obliged if you would tell him I am a little impatient about the engraved visiting cards. They are for a young lady here.

I wish the best compliments of the season to Mrs. Beamish and yourself, and to Minnie, and Miss Henrietta.

I remain ever truly, your affectionate cousin,

(Sd.)

BEAMISH MURDOCK.

8570

CHARLES BEAMISH, Esq.,

101 Queen St., Halifax.

No. 4. G. T. S.

LUNENBURG, 31st Dec., 1874.

Dear Charles,—

I received last night your letter, enclosing the new deposit receipt, and 5 Post Office Orders, all correct and satisfactory. Accept my best thanks for your prompt attention to my interests.

We had a storm of wind last night, and the ground is frozen hard today. I hope you are well.

Give my respects to T. B. A., when you see him.

With love to all in your house, I remain yours, ever affectionately,

(Sd.)

BEAMISH MURDOCK.

8580

CHARLES BEAMISH, Esq.,

101 Queen St., Halifax.

No. 5. G. T. S.

LUNENBURG, 4th Jan'y, 1875.

Dear Charles,—

I got the deposit receipt and post office orders all correct. They came with a letter from you of 28th December, and I received them Tuesday last, the 29th December. Next day I wrote you acknowledging the receipt of them, and also stating that I had written again to Miss Norris. I have now to acknowledge yours of the 31st December, which I did not get until 2d January, Saturday. As to the loan of \$2,200 on mortgage, I am quite agreeable to it, provided the title is clear on that point. I wish you to consult Akins, as he is the most experienced man in the profession; and if he is satisfied with the title, the mortgage, deed, &c., I know my money will be safe. I enclose back the deposit receipt for the \$6,600 in order that you may draw out the \$2,200 if all proves right. When the mortgage is recorded you can enclose it to me with the new deposit receipt for the \$4,400.

8590

With best love and respects to all my friends in Halifax, and wishing you and yours a happy new year,

I remain,

Your affectionate cousin,

(Signed) BEAMISH MURDOCK.

8600

CHARLES BEAMISH, Esq.,
101 Queen Street, Halifax, N. S.

No. 6. G. T. S.

MEYRER COTTAGE,
Lunenburg, 10th January, 1875.

Dear Charles,—

When you get the money to invest on mortgage on the deposit receipt, I wish you to draw out also one hundred dollars and send it to me in a post office order, as I find I shall want it shortly. I am going to pull down two barns, and then make a new fence round my premises, which are 55 feet wide and 120 feet in length, facing on three streets. My old cottage has been repaired on the outside, and is very warm and comfortable; and in the spring I will repair and new paper inside. I have three rooms and an excellent kitchen all on the one floor, and overhead a large room for Mrs. Peck, besides space enough to hold old trunks, &c. I have a very spacious dry and frost-proof cellar, I think the best in this town, and an excellent well of water in it; room enough for fuel, vegetables, &c., and to spare. I hope you will come this way in the spring, if not sooner, as I shall be proud to show you what a comfortable cottage I have got.

8610

With love to all my Halifax friends, especially to your family,

Believe me ever

Your affectionate cousin,

(Signed) BEAMISH MURDOCK.

8620

No. 7. G. T. S.

Lunenburg, 11th February, 1875.
MYRER COTTAGE.

My Dear Charles,—

I have just received your letter dated the 9th of this month. I now return you the deposit receipt for \$6,600 endorsed by me.

I wish you, as soon as you can do it, to draw from the Branch Bank \$250 (two hundred and fifty dollars) and remit it to me in post office orders, as I will have urgent need of it. Take, then, from the Bank one deposit receipt for \$2,200 separate and keep it by you in order to invest that amount at interest, on a mortgage, if you can by-and-by find a good security and fair interest, and take another deposit receipt from the Bank for the balance of \$4,150, *which last receipt enclose to me*, keeping that for \$2,200 yourself to look for an investment. 8630

I am much better than I was, although still very weak, having been twice all but dead within five months. I am glad to learn you are getting well. We have had some serious illness here. The winter has in severity surpassed any season we have had for twenty years or more. I shall be happy to see you if you come here, but I had rather you kept at home. As far as I can judge, it is awful for travellers,—the cold intense, and the drifts of snow so deep.

With my best thanks to you, and my love to Mrs. B., Minnie, and Miss Henrietta, also to Akins, if you should see him, 8640

I remain, ever your affectionate cousin,

(Sgd.)

BEAMISH MURDOCK.

CHARLES BEAMISH, Esq.,
101 Queen St., Halifax, N. S.

2 X. G. T. S.

LUNENBURG, 11th March, 1875.

Dear Charles,—

I got your note last night, enclosing Twenty Dollars Order on the Post Office, all right.

I have been very unwell, and am now slowly getting better. I know but little of the rules of Banking, but have fretted a little at wanting a dollar by their delay. If their rules will admit of it, please send me down *Five Hundred* Dollars as soon as they will give it. 8650

I have not patience to explain a thousand things to you, but my *long* illness has caused me great inconvenience and discomfort. I wish you would tell them at Nash's that you paid for the packing cases, as he has billed me for them. He also charges me some dollars as by account rendered, but I cannot find the account, nor do I remember what it is for.

Hoping you are better.

I have not seen Miss Pernetta lately.

Give my love to Mrs. B., to Minnie, and Miss Henrietta, also to T. B. Aikins.

Your affectionate cousin,

(Sd.)

B. M. 8660

No. 8. G. T. S.

LUNENBURG, 24th, 1875.

Dear Charles,—

I duly received the Bank deposits receipts for \$6200, and the Post Office Order for \$444— for your attention to which I offer you a thousand thanks. I am getting better in health by slow degrees, and hope to be quite well in a week or two more.

My best love to Mrs. B., to Miss H. James, and to Miss Maria B.

Ever your truly affectionate cousin,
(Sd).

BEAMISH MURDOCK.

No. 9. G. T. S.

8670

SATURDAY, 27th March, 1875.

Dear Charles,—

I intended to write to you last Monday, as I received all the deposit receipts and Post Office Orders correct last Saturday evening, and am not sure but I did write, but I have been so unwell that I cannot trust my memory. I have to give you a thousand thanks for settling everything so nicely for me. I hope you are all well at your house. For myself, I have not been really well one day in the last six months. If it is not too much trouble, I wish you would buy me three of those little bags of buckwheat flour that the grocers in Halifax sell. I think they hold ten pounds in each bag, and cost about half-a dollar. Now, if you can, get me these. Also buy me 3 or 4 pounds of sausages, we can't get one fit to eat here. You could pack them all in a rough box, and ship them in the packet, or the "M. A. Starr," or send them by Fishwick's Express. My health is so poor, and our means of food here so limited, that you would confer a great favor on me if you would do so. I enclose ten dollars, and Nash's account, as corrected, which I wish you to pay for me, and ask them to receipt in full to this date. Best regards to all at your house.

8680

Your affectionate cousin,
(Sd).

BEAMISH MURDOCK.

No. 10. G. T. S.

LUNENBURG, "Meyrer Cottage,"

Sunday, 18th April, 1875.

Dear Charles,—

I got your letter of the 14th instant. I enclose you the deposit receipt for \$380.20, endorsed.

8690

As to Miss Augusta W. C. Parker, I must buy a bill in duplicate in her favor, at short sight. It must be drawn in sterling money for whatever sum. Seven hundred and Ten (\$710), Canada Currency will come to.

It must be drawn in favor of Miss Augusta W. C. Parker, 53 Arundel Road, Little Hampton, Sussex, England.

As she will not be 21 until sometime in May, please enclose me the two copies of the bill you buy, and I will write, enclosing one of them, keeping the other till I get her reply or receipt for the money.

8700

I feel deeply indebted to you for the great care you have taken of my money interests.
I would wish you to send me Two Hundred Dollars as soon as the rules of the Bank will permit.

When the mortgages you have taken for me are duly recorded, you had better enclose them to me to keep with my deeds.

Before doing so, however, write a memorandum of—

1. Date of each Mortgage.
2. Name of party.
3. Location of the Property.
4. Amount of Mortgage.
5. Rate of Interest.
6. When the Principal is made payable.
7. Interest when due, yearly, half yearly, or quarterly.

8710

My object is, that you should receive the interest for me, or it would be a useless labor and expense for me to go to Town so often for that purpose, and you must accept 5 per cent. for your trouble in collecting and remitting the interest.

My time here I know is short, so you will not be long harassed in this way.

Try, my dear Charles, to buy me some tobacco seed, also some red flax seed.

I long sadly for them, and I think you can get them. If you cannot, I will write to Boston for them while it is time.

8720

With entire love to you and yours.

Believe ever your affectionate cousin,

(Sd).

BEAMISH MURDOCK.

P. S.—I am far from well in health, but hope that May will help me.

No. 11. G. T. S.

"MEYRER COTTAGE,"

LUNENBURG, 22nd April, 1875.

Dear Charles,—

I have a thousand thanks to send you for your kindness in procuring me the tobacco seed and red flax seed. One thing I mentioned to you, you seem to have forgotten. I want a little more cash, and requested you to send me two hundred dollars. I am busy in fixing up, and improving the place where I live, and hope if you are well enough that you will come down and spend a day or two with me. I am as yet far from strong, but am slowly and gradually recovering. The breaking of one of my ribs last January nearly killed me from the intense and excessive pain it gave me. I am now much better, thank God, and trust that in May I shall be quite well, and enabled to enjoy my little garden. I am quite happy here, except the weakness remaining from that accident. I have lots of work on hand, and the people here are awfully lazy and dilatory. Come down when you can, and see me, and I think I can find you accommodation and comfort in my wigwam.

8730

Ever yours affectionately, with my love to Mrs. B., to little Minnie, and Miss Henrietta.

8740

(Sd).

BEAMISH MURDOCK.

No. 12. G. T. S.

LUNENBURG, Tuesday, 4th May, 1875.

Dear Charles,—

I received your letter of 27th April, in due course, but I have not been well enough to answer it until to-day. I can hardly write now, owing to the hammering and noise about me, my place being repaired and fenced.

I have to say that I am deeply obliged for the pains you have taken, and the correctness of everything you have done for me.

I got the money at the Post Office here on the two orders you enclosed, \$117.

8730

My garden is now nicely fenced in, and I hope to sow some seeds this week. To-day, the weather is very fine.

Our Rector (Owen) has not any Chester Church record in his possession, nor is the marriage we look for in the Registry of the English Church in Lunenburg. When I am a little stronger, I will see Cossman, the Lutheran Minister.

With love and regard to all in 101 Queen Street,

I am ever yours affectionately,

(Sd).

BEAMISH MURDOCK.

No. 13. G. T. S.

LUNENBURG, 10th June, 1875.

8760

Dear Charles,—

I have looked carefully over the papers you left with me. I find the securities excellent, and the documents accurately prepared.

The file is deficient, inasmuch as there are wanting,—

1. Mr. Lenoir's mortgage deed.
2. do, policy of insurance.
3. John M. Crow's mortgage deed.
4. James M. Nisbett's policy of insurance.

Accept my warmest thanks for the care you have taken of my interests, in the investment of the money. I see by a note of T. B. A. among the papers, how little anxiety he felt for his poor cousin's interests.

8770

Give my love and respects to Mrs. B., to Minnie, and to Miss Henrietta James.

Ever yours,

(Sgd.)

BEAMISH MURDOCK.

No. 14. G. T. S.

MEYRER COTTAGE,

LUNENBURG, 24th June, 1875.

Dear Charles,—

I received your note enclosing the Post-office order for \$49.70, and have to thank you for your attention to my interests. I have been, and still am, very weak from the sickness and injuries I had to bear from September last till this Spring. Even now, I can hardly walk or write without difficulty, but I have some carriage exercise, which helps me along.

8780

I trust you and all your family are well. Give my love to all under your roof. I wish you to buy me three or four good shirts. Elliot, I think, has good ones. Send them up by Fishwick's express.

Yours ever in affection,

BEAMISH MURDOCK.

Y. G. T. S.

LUNENBURG, Monday, 30th August, 1874.

Dear Charles,—

I received your note, dated 26th instant, on Saturday night, enclosing a post-office order for \$16.35, which was duly paid me this morning. I am glad to learn that you propose coming this way soon. I am much impaired in bodily strength, and cannot see a book or a newspaper, which is a serious loss to me, as I can read no more. It is with difficulty I can manage to write these few lines.

With best love and regard to yourself, Mrs. B., Minnie and Miss H. James,
I remain ever your affectionate cousin,

BEAMISH MURDOCK.

CHARLES BEAMISH, ESQ.,
101 Queen Street, Halifax, N. S.

No. 2. G. T. S.

8800

LUNENBURG, Tuesday, November 29th, 1875.

My dear Charles,—

I feel uneasy at receiving no precise information as to the \$1,000 draft. You gave me a written memorandum acknowledging the facts of this deposit was held in your name as an indemnity to the estate of Cogswell, in case they could establish any claim against me. This memorandum has disappeared from the old leather pocket-book in which I kept it. This and several other papers of mine have been missing ever since you were here last. Possibly you may have taken them by some mistake, as they could have been of no value to you, most of them having been in my possession above fifty years, being the gift of my great-aunt who died shortly after, in the year 1826. I am old and partially blind, and I am not able to read either print or writing. My situation is most deplorable, my books and papers being at any one's mercy. I am not able to read a single line in any one of them. I wish you would now satisfy my mind as to the investment of the \$1,000. What has been done about it? and what has been left undone? I fancy some letter of yours to me must have miscarried, as you would have taken care to let me know what you were doing about it. I may be mistaken; but I do not think that I have as yet received one dollar of the interest or principal of the sum. You can set me right upon this, as I know that you keep a correct cash account. I have kept no account myself since I came to Lunenburg, more than three years since, and now am totally unable, from the loss of sight to keep any account if I wished to do so. The mortgages, &c., I presume, are all in the small trunk where I left them; but I can read none of them or know what they contain. You mentioned to me that you intended to transfer to me a good mortgage for \$840, and that I should receive the balance of interest and principal in cash. If I am wrong in my recollection you can correct me.

When Mr. Stephen Beamish came down here a few days after you left, he exhibited himself in such an awful state of mind and body, that I felt ashamed that any relation of mine should cut such a figure before my respected friends, who have sheltered in my wigwam since their great calamity that destroyed their lovely villa. Master Stephen, in the presence of several persons, including the rector, H. L. Owen, in my bed-room, stated loudly and repeatedly that he had maintained all our family, and supported them himself. He also said that his father had spent \$44,000 of his own at my first election for Halifax. He also said I was a robber and a

curse to the family. His visit lasted three or four days; the result after I got him off and paid his expenses was to me a deadly fit of illness, worse than I had ever felt in all my life. Thank God! I am now slowly and gradually recovering from it. 8830

Give my love to Mrs. B., Minnie and Miss Henrietta.

Ever your affectionate cousin,

BEAMISH MURDOCK.

No. 1. G. T. S.

(Canada Post Card.)

To Miss Maria Beamish, 101 Queen Street, Halifax, N. S.

LUNENBURG, 13th Jan'y, 1876.

Dear Cousin,—

8840

I got your letter the other day and was much pleased with it; please accept my thanks for your attention to a half-blind old relative. Give my love to your mother and father, and to your Aunt Henrietta. I barely escaped death from paralysis of the brain, but am now mending.

Believe me, yours affectionately,

(Sgd).

BEAMISH MURDOCK.

F. G. T. S. •

LUNENBURG, Thursday, 12th August, 1875.

Dear Ma'm,—

As I intend going to Halifax to-morrow, I wish to request you would take the sole charge of my house and affairs until I return. I find I am spending more than I can afford. 8850

It is my wish that Mrs. Peck and her daughter Bessie should have this. I am under obligation to Mrs. Peck for nursing me carefully through a long and severe illness last Winter, and I regret the necessity I am under, of sending her away. Make what terms or arrangements you see fit with her, and I will fulfil them.

Ever faithfully yours,

(Sd).

BEAMISH MURDOCK.

HON. MRS. KAULBACK.

H. G. T. S.

MONDAY, Sept. 13th, 1875.

Mrs. Peck.

8860

Dear Madam,—I cannot find the five silver teaspoons I had.

I also miss the small stove and pipe that were in my parlor.

Perhaps you could explain or let me know what became of them.

Do not forget to ask Mr. Power to return me my green portmanteau.

I am sorry to trouble you, but I am too poor to replace these articles.

Yours, &c.,

(Sd).

BEAMISH MURDOCK.

P. 2. G. T. S.

LUNENBURG, 4th Sept., 1875.

Mrs. Elizabeth Metzler,

8870

Madam,—Mr. Beamish Murdock has handed over to me a bill for \$54.60 rendered by you to him to day.

My instructions are to acquaint you that Mr. Murdock will not pay it. He says that some three weeks ago you sent in your bill amounting to \$30.00 for liquors obtained in small quantities.

That he felt satisfied the bill was excessive, yet preferred paying it to making any objection, and paid it yesterday; but refuses further imposition, and wishes you to understand he will not pay it.

Mr. Murdock says that he believes two bottles of liquor were got from you since the presentment of the first named bill,—by his orders which he was willing to pay.

Yours truly,

8880

(Sgd.)

W. H. N. KAULBACK.

A. G. T. S.

WILL OF 27TH AUGUST, 1875.

This is the last Will and Testament of me, Beamish Murdock, of Lunenburg, in the Province of Nova Scotia, Dominion of Canada, Queen's Counsel, D. C. L., &c., &c.

I, the said Beamish Murdock, considering the uncertainty of this mortal life, and being of sound mind and memory, do make and publish this, my last Will and Testament, revoking all Wills and codicils heretofore made by me.

First, I give and bequeath to my loved Cousin Thomas B. Aikins, D. C. L., twenty volumes of my books, should he be pleased to select the same within one month from time of my decease.

8890

I give and bequeath to Charles W. H. H. Kaulback, of Lunenburg, aforesaid, eldest son of Senator Kaulback, all my old Coins and other antique relics, whether of art, nature, or otherwise.

I give and bequeath to the Honorable Henry A. N. Kaulback, of Lunenburg, aforesaid, my gold watch with its appendages, in token of my esteem and friendship.

All the rest residue and remainder of my house furniture, goods and chattels, I give and bequeath to Eunice Sophia Kaulback, wife of said Henry A. N. Kaulback, together with the full sum of four thousand and five hundred dollars for her separate use and benefit during her natural life, the same to be invested by my Executors on interest, the interest to be paid annually to the said Eunice Sophia Kaulback, without any personal right of interference or control by her present or any future husband, and without any charge for commission for investing, collecting, or otherwise by either of my Executors; and on her decease, the said principal sum of four thousand and five hundred dollars hereby bequeathed with any interest thereon accruing or undrawn, I hereby will and direct to be divided equally among her four children, Charles, Edna, Mary, and Rupert Kaulback, without any charge by my Executors for anything done in relation thereto by way of commission or otherwise.

8900

I give and bequeath to my dear Cousin Maria Beamish, daughter of my trusty friend and Cousin, Charles Beamish, of Halifax, in the Province aforesaid, the sum of one thousand dollars.

I further Will and direct that the said Henry A. N. Kaulback, his wife and family have the free and uncontrolled use, occupation, and benefit of my dwelling house, garden, and grounds in the Town of Lunenburg, which they now occupy, for any term not exceeding three years, from the time of my decease, free from all charge for the same, and that the said Real Estate be sold

8910

subject to such right of occupation as aforesaid, together with all other my Real Estate, and the proceeds thereof applied towards the payment of the legacies herein mentioned.

Lastly, I hereby constitute and appoint my trustworthy friend, the aforesaid Henry A. N. Kaulback, and my trusty Cousin, the aforesaid Charles Beamish, to be Executors of this, my last Will and Testament. And further, I give, devise, and bequeath to them, the said Henry A. N. Kaulback and Charles Beamish all the rest residue and remainder of my Estate, of whatever kind and nature, and the proceeds thereof to be equally divided between them.

In testimony whereof, I hereunto set my hand and seal, and publish and declare this to be my last Will and Testament this Twenty-Seventh day of August, A. D., One Thousand Eight Hundred and Seventy-Five, 8920

(Sd).

BEAMISH MURDOCK. (L. S.)

The above instrument was on the day of the date thereof declared by the testator, Beamish Murdock to be his last Will and Testament, and he then acknowledged to each of us that he had subscribed the same, and we, at his request, signed our names hereto as attesting witnesses in his presence, and in the presence of each other.

(Sd).

WILLIAM ELLIS.

(Sd).

GEO. A. ROSS.

MEMO. OF MORTGAGES. No. 1. G. T. S.

Securities.

8930

Deed dated 20th February, 1874.

Alexander Robertson, of Halifax, N. S., Blacksmith, and Frances, his wife, to Francis W. Collins, of Liverpool, Queens Co., merchant, Executor of the late Frances Laura Marshall.

For \$300, Canada money, convey to F. W. Collins, Executor as aforesaid, lot of land on Gottingen Street, Halifax; on the west side of the street 43 feet 6 inches, and 100 feet in depth. Proviso to repay in one year with interest at 7 per cent.

Recorded Book 192, pp. 256, 257, 258.

Two other mortgages to Binney, et al.; one in 1873 for \$200, second same year for \$1400. Releases of both and release of mortgage to Collins.

Mortgage 20th April, 1875, from Alexander Robertson and Elizabeth Frances his wife, to Beamish Murdock, for \$2,400, payable in one year at 7 per cent. interest, lot of land bounded by west side of Gottingen Street, &c., same as in the mortgage to Collins, 43 feet 6 by 100. Also mortgage bond. Also policy insurance for \$2,400, Aetna. Expires 14th April, 1876. 8940

Continue to insure \$2,400. Interest payable in four quarterly payments. Continue policy in Mr. Robertson's name.

2. James H. Nisbet, Trader, and Elizabeth Ann his wife, deed of mortgage to B. Murdock, pieces of the former glebe land of St. Paul's Church, Halifax, N. S. At Richmond, lots No. 19 and 20, block letter D, in plan of 1871, on file at the parish vestry rooms; fronting on the E. side of College Street 66 feet, thence Easterly by the course of Rector Street 100 feet, northerly parallel to College Street 66 feet or to lot 18 on said plan, thence westerly 100 feet or to College Street. 8950

\$1000 payable in one year with 7 per cent. interest, payable quarterly.

Covenant to insure \$1000 on premises, mortgagee to hold the policy dated 27th April, 1875.

Recorded book 199, pp. 140, 141, 142.

John M. Crow, Mason, Mortgage date, 24th May, 1875. Bond for \$1000 payable in one year with interest at 7 per cent. Policy on house in Seymour Street.

Peter H. Lenoir, Esq. Mortgage bond dated 6th May, 1875, for \$1000; interest at 7 p. c.

V 1. G. T. S. SETTLEMENT BETWEEN MURDOCK AND BEAMISH.

1874.			
Sept. 1st.	Placed in the Bank as security for the Cogswell claim in case it should be hereafter made against Mr. Murdock.	\$1000.00	8960
	Bank interest 7 m. to 1st April, 1875.	33.00	
	This sum of interest paid B. Murdock by Post Office order in April.		
	This sum of principal invested on Mortgage and Bond, per Andrew M. Barton, on property in Gerrish Street, April, 1875.	840.00	
Oct. 1875.	Half years interest at 7 per cent. due.	29.40	
Apr. 1875.	Difference between \$1000 and \$840 placed in the Savings' Bank.	160.00	
	Interest to November.	3.40	
	Mr. Beamish pays Mr. Murdock the above sum of \$160 drawn per Savings' Bank.	160.00	
	Interest thereon as above.	3.40	8970
			<hr/>
			\$163.40

Mr. Murdock hereby acknowledges to have this day received the above sum of One Hundred Sixty-three dollars and forty cents per C. Beamish, and also to have received assignment of the mortgage per Andrew Barton to C. Beamish, above mentioned, for Eight Hundred and Forty dollars, with half years interest to October last, unpaid.

(Sgd).

BEAMISH MURDOCK.

Lunenburg, December 13, 1876.

(Sgd).

C. BEAMISH.

Witness—(Sgd). H. A. N. KAULBACK.

IN THE COURT OF PROBATE, 1876.

8980

LUNENBURG, SS.

In the matter of the proof, in solemn form, of the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister-at-Law, deceased.

To the Worshipful the Judge of the Court of Probate, in and for the County of Lunenburg:—

The Petition of Charles Beamish and Henrietta James, Respectfully sheweth,—

That your petitioners in contesting the alleged last will of the late Beamish Murdock, during the past Summer, has been put to great expense and inconvenience; that he was obliged, in consequence of the protracted proceedings before your Court, and in consequence of the very large amount of testimony received against the objections and protests of petitioners' counsel,

and which, petitioner is advised, are inadmissible and irrelevant, and which respondent persisted in giving, to employ and send from Halifax on several occasions as counsel, Mr. Weatherbe, the Hon. Mr. McDonald, and Mr. Harrington. 8900

That two several adjournments took place before respondents' defence was finished, and many days were occupied therein. That during the examination of the last witness produced by respondent, Mr. Harrington was present and attended to cross-examination of said witness; said last mentioned hearing extending from Thursday morning continuously, till Saturday night at half-past six, at which time the respondents' counsel for the first time intimated that he would call no more witnesses.

That previously the chief management of the cause was in the hands of Mr. Weatherbe, and he had arranged to have rebutting testimony produced whenever it would be by the Judge received. 9000

That at the hour aforesaid on Saturday night, when the respondents' defence was completed, Mr. Harrington intimated that he would be obliged to leave immediately for his home in Halifax.

At said time it was arranged and understood by the Court that the said Court should meet again on Monday morning, at half-past nine o'clock, when Mr. Harrington informed said Court that he could not be present on Monday, and that it would be impossible to procure the rebutting testimony before the time named for the meeting of said Court, and then believed that reasonable time would be granted petitioners' counsel by the Court to subpoena and procure said rebutting testimony.

That Mr. Ross was to appear on Monday morning to have a day fixed for taking said testimony, and did appear for that purpose, but the Court then refused to adjourn, and for the first time intimated that the evidence would then be finally closed. 9010

That there was not time during the interval between Saturday night and Monday morning to subpoena and have said witnesses in attendance; and their attendance could not have been procured in any other way, unless they were supposed to have been in attendance during the very protracted period during which the respondent was examining his witnesses, which extended at different times, from some time in the Summer, till the end of October.

That your petitioner is informed that no time was given for procuring the attendance of said witnesses, and that as before mentioned the Court for the first time on Monday morning declared that the evidence should be then closed. 9020

That a *dedimus* was issued to take the examination of the petitioner herein for the purpose of rebutting certain evidence of respondent, and also the examination of another witness for the same purpose; and the same is returnable on the twenty-seventh instant.

That your Worship cannot legally refuse to receive evidence tendered on the opening of of the Court where said *dedimus* is returnable; and your petitioner has evidence of a very important witness to rebut testimony given by and on behalf of said respondent, which will be ready to be then tendered.

That the refusal to receive such evidence would greatly injure your petitioners, and prevent what your petitioners are informed and verily believe it, the evidence already received is held to be legal evidence, to be important and admissible testimony from being given herein in his own behalf. 9030

That your petitioners hereby formally tender witnesses who shall appear regularly subpoenaed, to be examined when your Worship shall be ready to hear them; and your petitioners solemnly protest against the cause being closed without such evidence.

Your petitioners also call your Worship's attention to the motion made in affidavits already in evidence, in relation to the evidence of Rev. Mr. Ellis so unjustly and illegally interrupted by respondent and the other executor, Mr. Owen; and your petitioners can scarcely believe that your Worship will do them so great an injustice as to prevent them from closing the examination of Mr. Ellis.

Your petitioners also protest against the refusal of your Worship to grant a *dedimus* for the examination of the wife and daughter of the petitioner, Charles Beamish. Your petitioners pray that your Worship may make such order as may secure them justice herein. 9040

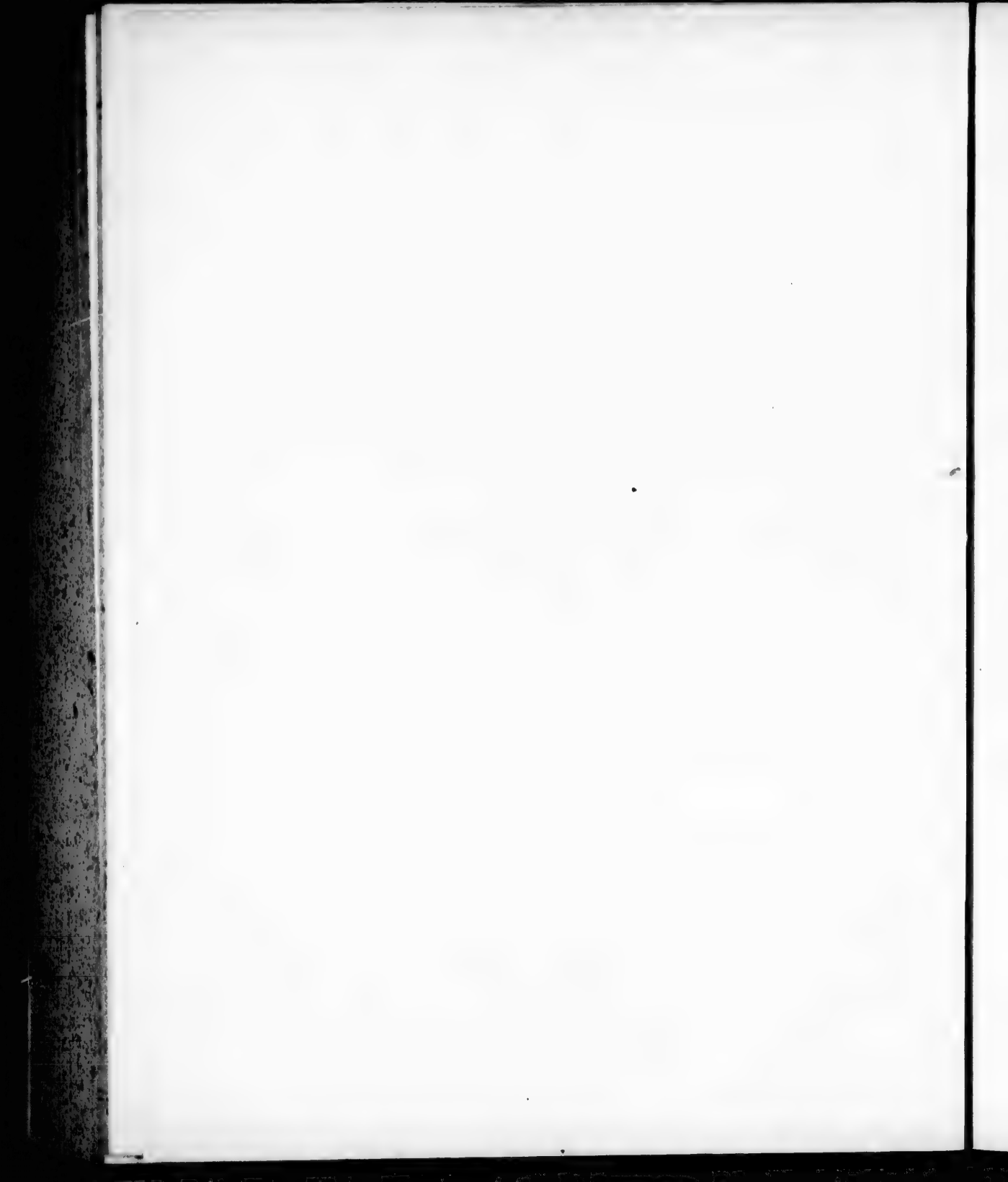
And your petitioners, as in duty bound will ever pray.

(Signed)

C. BEAMISH,

(Signed)

HENRIETTA JAMES.



COURT OF PROBATE,

CO. LUNENBURG, SS.

To the Worshipful George T. Solomon, Esquire, Judge of Her Majesty's Court, for the Probate of Wills within and for the County of Lunenburg.

Petition of Charles Beamish, of Halifax in the County of Halifax, gentleman. Humbly sheweth: 9050

That Beamish Murdock, late of Lunenburg, in the said County, Barrister, departed this life on the Ninth day of February, 1876, leaving goods, chattels, and credits to be administered, and having first duly made and published his last Will and Testament in writing, whereby he appointed your petitioner Executor thereof. That Joseph Bell and William Howe, the subscribing witnesses to said Will, and your petitioner reside at Halifax more than thirty miles distant from the Town of Lunenburg, where the Court of Probate for said County sits.

That your petitioner is willing to accept the trust, and prays therefor, that Probate of the said Will may be granted to him, and that a *Dedimus Protestatem* may be granted by your Worship, directed to such person in Halifax aforesaid as your Worship may be pleased to appoint, authorizing such person to take the depositions of the said Joseph Bell and William Howe, the said witnesses, as to the proof of said Will, under the Statute respecting the Probate Court, and the procedure thereon; and also authorizing such person to administer and take the oath of your petitioner in writing, under said Statute, as to the value of the Estate of the deceased. 9060

And as in duty bound, &c.

(Sd).

C. BEAMISH.

NOTICE TO PRODUCE. No. 15. G. T. S.

LUNENBURG COURT OF PROBATE.

In the matter of the proof in solemn form of the last will and testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister-at-Law, deceased. 9070

To Hon. Henry A. N. Kaulback, of Lunenburg, and William H. Owen, Esq., of Bridgewater, Executors appointed under said will.

Take notice that you will be required to produce on the hearing of the above matter and give the same in evidence if required so to do, the following documents:—

All receipts of money paid by the said deceased to the said Hon. H. A. N. Kaulback, or by the said Kaulback to the said deceased, in the years 1874 and 1875.

All accounts of business transactions and the original entries thereof, between the said Kaulback and deceased, for the years 1874 and 1875.

All accounts and original entries of rye whiskey or other liquors by the said Hon. H. A. N. Kaulback sold and delivered to the deceased in his lifetime, from the month of April, 1875, to the date of his decease, and particularly a memorandum or account made by said Kaulback in August or September, last, including said liquors for which said Kaulback took a note of hand. 9080

The original draft of the above named will in the handwriting of said Kaulback.

All telegrams and letters, and copies thereof that passed between said Kaulback and Edwin Kaulback at and about the time of the decease of the said Beamish Murdock.

All accounts for professional services by said Kaulback in connection with the claim of Mrs. Metzler against the deceased, and all receipts between the parties in relation thereto.

Also all correspondence or copies thereof between said Kaulback and James William Johnston, of Halifax. Especially a letter in which said Kaulback stated that he had purposely refrained from drafting or writing said will or in any way interfering with the making or executing or directing thereof.

9090

And you will also take notice that unless said documents are produced, secondary evidence thereof will be tendered.

Yours, &c.,

ROBT. L. WEATHERBE,
Proctor of Petitioners.

NOTICE TO PRODUCE. No. 16. G. T. S.

LUNENBURG COUNTY OF PROBATE.

In the Matter of the proof in solemn form of the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister at Law, deceased.

9100

To Hon. Henry A. N. Kaulback, of Lunenburg, and William H. Owen, Esquire, of Bridgewater, Executors, appointed under said Will.

Take notice that you will be required to produce on the hearing of the above matter, and give the same in evidence, if required so to do the following documents:—

A certain paper writing, being or purporting to be, the last Will and Testament of Beamish Murdock, deceased, and partially destroyed by the fire which destroyed said H. A. N. Kaulback's house in July, 1875, and also the original draft thereof.

Also, another paper writing, being or purporting to be, the last Will and Testament of Beamish Murdock, deceased, and written and executed sometime during the Ninth of August or September, 1875, and also the original drafts thereof in said Kaulback's hand-writing, and all other Wills or documents purporting to be Wills of the said Beamish Murdock, deceased, and the drafts thereof, and you will also take notice that unless the said documents are produced, secondary evidence will be tendered.

9110

Dated at Lunenburg, this 12th day of August, A. D., 1876.

ROBT. L. WEATHERBE,
Proctor of Petitioners.

NOTICE TO PRODUCE J. G. T. S.
IN THE COURT OF PROBATE.

CO. LUNENBURG, SS.

In the matter of the proof in solemn form of the last will and testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister-at-Law, deceased. 9120

To Robert L. Weatherbe, Esq., Proctor of Petitioners and Legatees under will of said Beamish Murdock, alleged to have been made in April, 1875:

Take notice that you will be required to produce, on the hearing of the above matter, and give the same in evidence, if required, so to do the following documents, viz.: Letters from said Beamish Murdock to Thomas B. Akins, dated in December last, and his answers thereto.

A certain paper writing, being, or purporting to be, the last will and testament of Beamish Murdock, deceased, dated on or about the twenty-first day of August, A. D., 1875, executed in presence of William Ellis and George A. Ross. 9130

And you will also take notice that unless the said letters and documents are produced, secondary evidence will be tendered.

Also, a certain paper writing, purporting to be the last will and testament of Beamish Murdock, deceased, and executed at New Ross, about the last part of June, A. D., 1875, and witnessed by George Ross and Vernon Smith.

And you will also take notice that unless the said documents are produced, secondary evidence will be tendered.

Dated at Lunenburg, this fourteenth day of August, 1876.

Yours, etc.,

WILLIAM H. OWEN,

9140

Proctor of Respondents, or those supporting the last will and testament of the late Beamish Murdock, deceased, dated November, 1876.

NOTICE TO PRODUCE G. G. T. S.
IN THE PROBATE COURT, 1876.

LUNENBURG, SS.

In the matter of the proof, in solemn form, of the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister-at-Law, deceased.

To Robert L. Weatherbe, Proctor of Petitioners and parties interested in setting aside the will of said Beamish Murdock, deceased:

Take notice that you will be required to produce on the hearing of the above matter, and give the same in evidence, if required, before the Judge of Probate, at his Court, the following papers and documents, viz.: 9150

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A letter from said Beamish Murdock to Mrs. Peck (a legatee under the will of April, 1875), dated 13th September, 1875, relative to silver spoons and a stove and pipe missed by him.

Also an assignment to said Beamish Murdock by Charles Beamish, (a legatee and petitioner under an alleged will of April, 1875, purporting to be made by said Beamish Murdock) of a certain Mortgage of land which said assignment was made, and dated, and delivered to said Beamish Murdock, on or about the 13th day of December last, to said Beamish Murdock by said Charles Beamish.

Also, two certain letters dated respectively, November 16th, 1875, and December 27th, 1875, from said Beamish Murdock to Thomas B. Aikins 9160

Also, a certain other letter from said Beamish Murdock, deceased, to Charles Beamish, aforesaid, dated 16th November, 1875.

Together with all other letters and correspondence between said Beamish Murdock and said Charles Beamish, and said Thomas B. Aikins. And all other papers, books, and documents in any way relating to, or having any bearing upon the above matter, or in any way relating thereto. Dated this Ninth day of August, A. D., 1876.

Yours, &c.,

WILLIAM H. OWEN,

Proctor of Respondents or Legatees, under the last Will and Testament of the late Beamish Murdock, deceased, dated November, 1875. 9170

F—G. T. S.

IN THE PROBATE COURT, 1876.

CO. OF LUNENBURG SS.

In the matter of the proof, in solemn form of law, of the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister-at-Law, deceased.

I, Robert L. Weatherbe, of the City and County of Halifax, Barrister, the Proctor of the Petitioners herein make oath and say as follows:—

I say that while Cross-examining Rev. Wm. Ellis in this case, this morning, I put to him clearly and distinctly the question following in very substance and meaning, and as I believe in the very words: 9180

“Were you ever in Mr. Murdock’s house in which he died, half a dozen times when he was present that liquor was not produced?”

To which question he made answer, as taken down by the Clerk, as follows:

“I would not swear that I was in the house of Murdock’s, in which he died, half a dozen times at all.”

Upon which William H. Owen, Esq., one of the Executors of the Will in question, and who has been acting on the trial hereof for the respondents, and who produced and examined said Ellis as a witness, in a tone of voice easily and distinctly heard in Court, requested me to ask him (the witness) the date he referred to. I immediately remonstrated with said Owen for making the suggestion he did, and thereupon referred the said witness to the word “even” in my question and repeated to him the same in a distinct and loud voice, and asked him if he so understood, or words to that effect, to which he twice assented. Meanwhile said Owen left his seat and came forward to the desk and still more distinctly repeated his suggestion before referred to until after the witness had so assented to his knowledge and understanding of my question when he extracted by such suggestion an explanation or modification of his answer, which the said Owen thereupon applied to the Court to have noted; and I say that I have so frequently been interrupted in the same way that I cannot proceed with the Cross-examination of the witness. 9190

Sworn to at Lunenburg, in the County of Lunenburg,)

this 16th day of August, A. D., 1876, before me,)

(Sgd.) GEO. T. SOLOMON, Judge of Probate.

(Sgd.)

ROB. L. WEATHERBE. 9200

I—G. T. S.

LUNENBURG, SS.

IN COURT OF PROBATE, 1876.

In the matter of the proof in solemn form of law of the alleged last Will and Testament of Beamish Murdock, late of Lunenburg, in the County aforesaid, Barrister-at-Law, deceased.

I, George A. Ross, of Lunenburg, in the County of Lunenburg, Barrister, &c., make oath and say as follows: That I have heard read over the affidavit of Robert L. Weatherbe, made in this matter in reference to the evidence of William Ellis, and that the contents thereof is true and correct. (Sd) GEO. A. ROSS. 9210

Sworn to before me, at Lunenburg, this 16th day of August, A.D. 1876.

(Sd)

GEO. T. SOLOMON,

Judge of Probate.

J—G. T. S.

LUNENBURG, SS.

IN THE COURT OF PROBATE, 1876.

In the matter of the proof in solemn form of law of the last Will and Testament of Beamish Murdock, of Lunenburg, in the County of Lunenburg, Barrister-at-Law, deceased.

I, Henry Arenburg, of Lunenburg, in the County of Lunenburg, mariner, make oath and say as follows: That I have heard read the affidavit made by Robert L. Weatherbe in this matter, in reference to the testimony of William Ellis, and that the contents of said affidavit are true and correct. 9220

(Sd)

HENRY ARENBURG.

Sworn to at Lunenburg, before me, this 16th day of August, }

A. D. 1876. }

(Sd)

GEO. T. SOLOMON,

Judge of Probate.

H—G. T. S.

LUNENBURG, SS.

IN THE PROBATE COURT, 1876.

9230

In the matter of the proof in solemn form of the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister-at-Law, deceased.

I, Joseph Creighton, of Lunenburg, in the County of Lunenburg, master mariner, make oath and say: That I have heard read the affidavit made by Robert L. Weatherbe this day, in reference to the testimony of William Ellis, and that the contents of that affidavit is true and correct. (Sd) JOSEPH CREIGHTON.

Sworn to at Lunenburg this 16th day of August, }

A. D. 1876. }

(Sd]

GEO. T. SOLOMON,

Judge of Probate.

9240

A—G. T. S.

IN THE PROBATE COURT, 1876.

LUNENBURG, SS.

In the matter of the proof in solemn form of the last will and testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg, Barrister-at-Law, deceased.

I, William H. Owen, of Bridgewater, in the County of Lunenburg, Barrister-at-Law, Proctor of the Respondents in the above matter make oath and say as follows:

First I say that the Reverend William Ellis on his direct examination, in the above matter, stated, with reference to his visiting Mr. Murdock, as follows, or in words to the following effect:

"I met him (meaning Mr. Murdock) very seldom before he left for Halifax. I saw him more frequently when he returned. And I should say for the last five or six months once or twice a week on an average. Previous to Mr. Kaulback's fire I was most frequently in the habit of seeing Mr. Murdock at Mr. Kaulback's house, seldom saw him anywhere else. Occasionally saw him at his own house previous to that date." (also) "between the time of the fire, about the first of August last, and that at Mr. Murdock's decease I was in the habit of visiting him once or twice a week on an average. I was in the habit of visiting him in his own house after the fire."

That in answer to a question put by Robert Weatherbe, Esq., to said William Ellis on his Cross-examination, the said William Ellis stated, as appears by the minutes of his evidence taken by the Clerk of the Court, "that he would not swear that he was in the house of Mr. Murdock, in which he died, half a dozen times at all." When I, this deponent, feeling fully convinced in my own mind that the said William Ellis did not comprehend the nature of the question to which the said answer was given, and that he, as I verily believe, had reference in said answer solely to his visits to said Murdock's house, while said Murdock was residing alone in his said house, before said fire, and not to the visits which he, the said William Ellis, had previously stated he had made once or twice a week between the date of said fire about the first day of August last and that of Mr. Murdock's decease, asked said Robert Weatherbe, Esq., to kindly mention to the witness up to what date he had reference in his question, that the said Robert Weatherbe did not mention to what date he had reference, in accordance with my solicitation, but once or perhaps twice referred the witness to the word "ever" which, in my opinion, did not divest the said William Ellis of the impression that said Robert Weatherbe alluded to said visits when said Murdock was living alone before said fire, and before Mr. Kaulback moved into his house, whereupon I, this deponent, renewed my application to said Weatherbe, and asked him to state to said witness up to what date he had reference, without in any way making or intending to make any suggestion to said witness on either of said occasions as to any particular date, after which said witness stated or explained that he had reference to visits at Mr. Murdock's house while he was living alone before the fire and previously to Mr. Kaulback moving into Mr. Murdock's house, or words to that effect. I say that it was not my intention to make any improper suggestions to said witness, but that I deemed it but fair and right that said William Ellis should be informed by said Weatherbe of the real nature and effect of his question in order that said Ellis might not by misapprehending the question be placed in a false position. That subsequently the said Ellis, at his own solicitation, and by the permission and request of the presiding Judge of Probate, was allowed to give his explanation to said last answer, which, as will appear by the minutes of the Court, was as follows:—"In making the last answer I had reference only to the time during which Mr. Murdock resided alone in the house. I have already stated on oath that subsequently to Mr. Kaulback's residence in that house I visited it once or twice a week on an average, and to that statement I adhere."

I say that my said application was not for the purpose of improperly interrupting Mr. Weatherbe, but was made from a sense of duty for the purpose of doing justice to said witness, who, I feel fully convinced, did not (as the explanation given by him shows) understand the nature of said question as aforesaid as well as the said Respondents, for whom I was acting as Proctor.

That although said Ellis, in answer to a question put by said Weatherbe, as to whether he understood the question referred to, replied in the affirmative, yet I was fully convinced that said Ellis still unconsciously misapprehended the question, and considered the period referred to therein to be anterior to said fire, and while said Murdock was residing alone, as subsequently attested to in effect by said Ellis in said explanation.

Sworn to at Lunenburg, in the County of Lunenburg, the 17th day of August, A.D. 1876, before me,

(Sd) WILLIAM H. OWEN.

GEORGE T. SOLOMON,
Judge of Probate.

COURT OF WILLS AND PROBATE.

9300

CO. LUNENBURG, SS.

At a Court of Probate holden at Lunenburg, in the County of Lunenburg, in the Province of Nova Scotia, before me, George T. Solomon, Judge of Probate for said County, on the twenty-fifth day of May last past, and adjourned from time to time to the twenty-seventh day of November, A. D. 1876.

In the matter of the proof in solemn form of law of the instrument bearing date on the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, purporting to be the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County and Province aforesaid, Queen's Counsel and Doctor of Civil Law, &c., deceased.

The foregoing mentioned instrument being presented to me as the last Will and Testament of the said Beamish Murdock, deceased, for Probate by William H. Owen, one of the executors herein named, was, on the nineteenth day of February, in the year of our Lord one thousand eight hundred and seventy-six, duly proved by common form of law, and filed in the Registry of said Court; that on the twenty-sixth day of February, in the year last aforesaid, a Caveat was filed in said Registry to stay Probate of the said alleged Will being granted to the said William H. Owen and the Honorable Henry A. N. Kaulback, executors thereof, by Charles Beamish, sole executor of a former alleged Will of the said Beamish Murdock, deceased, bearing date the sixth day of April, in the year of our Lord one thousand eight hundred and seventy-five, which has also been proven in common form of law and filed in the Registry of said Court; and a petition being subsequently presented to me, signed by the said Charles Beamish and one Henrietta James, both legatees under the last-mentioned Will, praying that the said first-mentioned Will of deceased might be proved in solemn form of law, and the parties interested therein cited to attend the proof thereof, alleging in their said petition that at the time of the execution of the said Will by the said Beamish Murdock, deceased, bearing date as aforesaid on the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, he, the said Beamish Murdock, was not of a sound and disposing mind, and that at the said last-mentioned time, and for a considerable period theretofore, the mind and will of the deceased were under the control and dominion of the said Honorable Henry A. N. Kaulback, and that at the said time the said Beamish Murdock, through the use of ardent spirits, from bodily infirmity and under undue influence, had become greatly weakened in his understanding, and his intellect was so impaired and disordered, and his mind so defective, weak and obscured that he was not in a fit and proper condition to dispose of property by last Will and Testament, and that the said last alleged Will ought not to be recognized in law as the last Will and Testament of said deceased.

Whereupon, the said parties being duly cited and the said Charles Beamish and Henrietta James, legatees as aforesaid, under the alleged will of the deceased, dated the sixth day of April, in the year of our Lord, one thousand eight hundred and seventy-five, appearing before me by Robert L. Weatherbe, their Proctor, and the said William H. Owen appearing as Proctor on behalf of the legatees, and parties interested under the first mentioned will of deceased now in dispute. And I, the said George T. Solomon, Judge of Probate as aforesaid, having first carefully and diligently searched into and considered the whole proceedings had and done before me in the matter, and having heard the said parties by their respective Proctors, Counsel and Attornies, and also all the evidence given by the subscribing witnesses to the said alleged Will, and the evidence adduced by said petitioners against the validity thereof, on the grounds set forth in their said petition, and having heard the evidence given on behalf of the respondent's in rebuttal to the same, and having carefully weighed and examined all the documentary testimony given in by the said Proctor's, respectively, and now on file in the Registry of said Court, and also having looked into and examined the law bearing on the case; I am of opinion, first that the said alleged will of the said Beamish Murdock, now in dispute, bearing date the fifteenth day of November, in the year of our Lord, one thousand eight hundred and seventy-five, was rightly and duly made, and executed according to law by the said Beamish Murdock, now deceased, that he was at the time he executed the same, of sound and disposing mind, memory and understanding, and well knew and understood the contents of said Will

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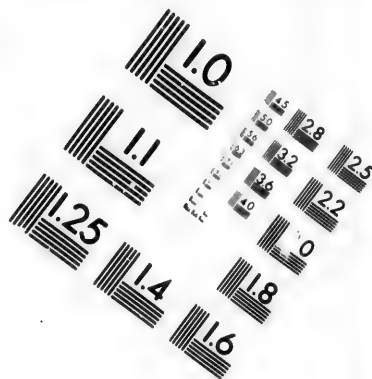
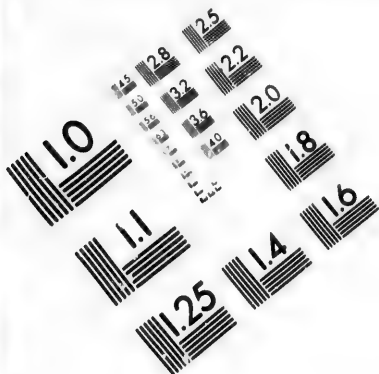
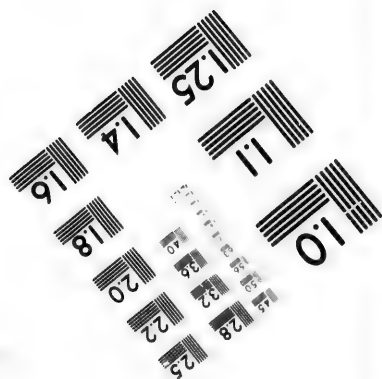
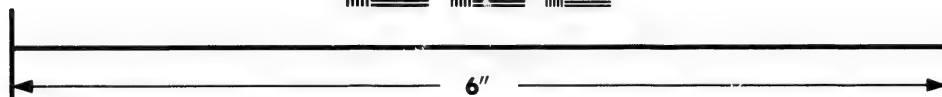
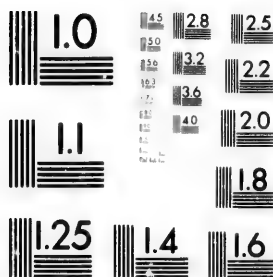


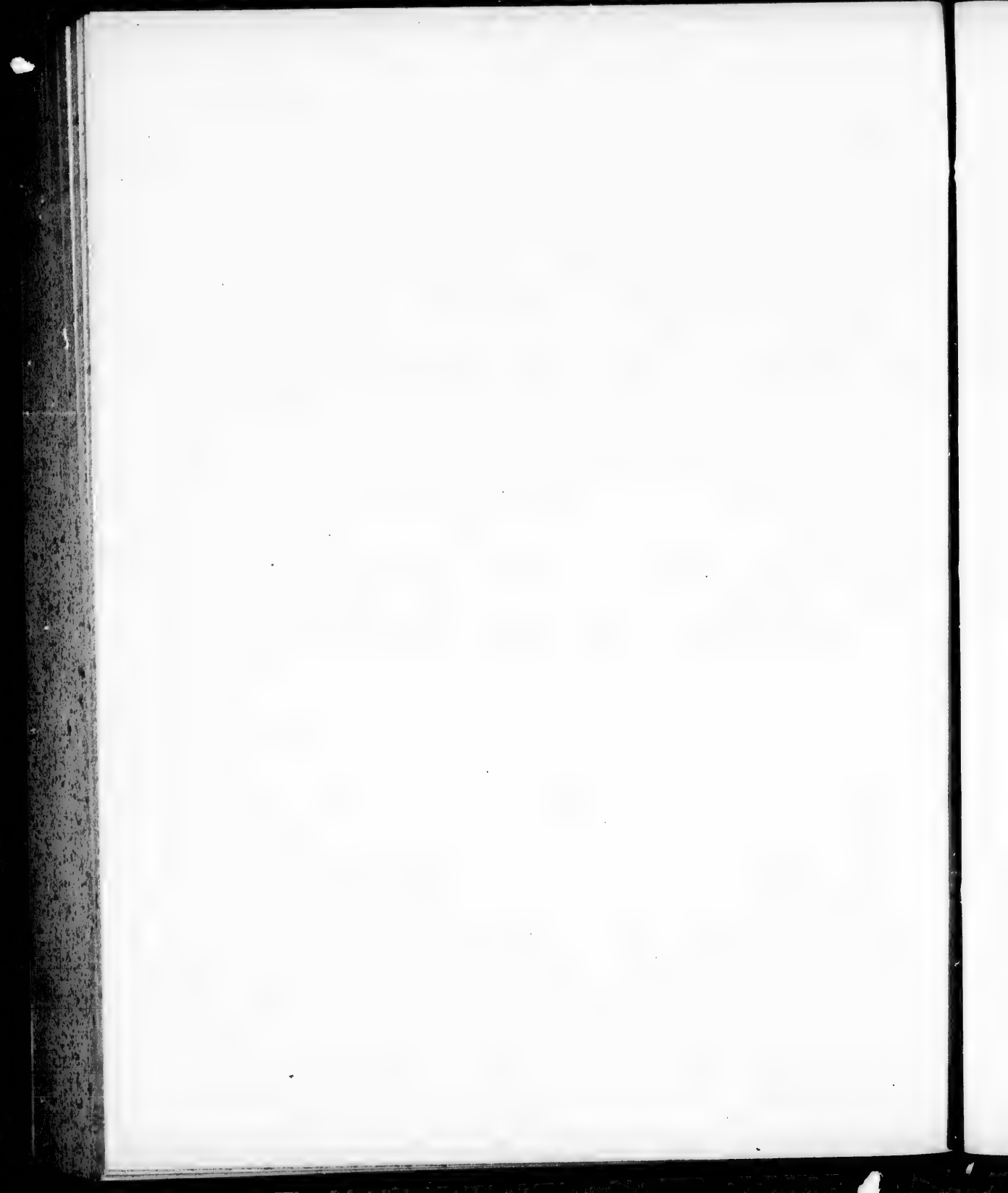
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and the business in which he was then engaged. Secondly, that the said Beamish Murdock, at the time he executed the said Will, was not in any way excited by liquor or under the influence thereof, but was calm and collected. Thirdly, that the evidence given by the witnesses who have been examined, some at great length on both sides, some in support of said Will, others in opposition to the validity thereof, with the documentary testimony given in as aforesaid, and the law bearing upon the case, have failed to satisfy me, that undue influence was used by the said Honorable Henry A. N. Kaulback, to get the said Beamish Murdock to make said Will and make him or his family the recipients of his bounty.

I do, therefore, adjudge and decree that the said petitioners having failed to sustain their said pleas or allegations contained, and set forth in their said petition, that the said alleged Will of the said Beamish Murdock, deceased, last referred to be and the same is hereby fully established, proved and approved as the last Will and Testament of the said deceased, thereby revoking all former wills made by the said deceased. 9360

But forasmuch as it appears to me from the evidence adduced on behalf of said petitioners, that there was reasonable grounds for contest, I do, therefore, order and decree that each party shall bear their own costs and expenses.

Given under my hand and the Seal of the said Court, at Lunenburg, in the County of Lunenburg, in the Province of Nova Scotia, this tenth day of March, one thousand eight hundred and seventy-seven. 9370

GEORGE T. SOLOMON,
Judge of Probate, Co. Lunenburg.

IN THE COURT OF WILLS AND PROBATE.

LUNENBURG, SS.

In the matter of the proof in solemn form of law of the instrument bearing date on the fifteenth day of November, in the year of Our Lord, One Thousand Eight Hundred and Seventy-five, purporting to be the last Will and Testament of Beamish Murdock, late of Lunenburg, in the County of Lunenburg and Province of Nova Scotia, Queen's Counsel and Doctor of Civil Law, &c., deceased.

Take notice that Charles Beamish and Henrietta James, both legatees under the alleged Will of said Beamish Murdock, bearing date the sixth day of April, A.D., 1875, the Petitioners herein will appeal against the order, sentence, or decree of the Judge of Probate in the above matter, dated 18th March, A.D., 1877, as being against law and evidence on the following grounds:— 9380

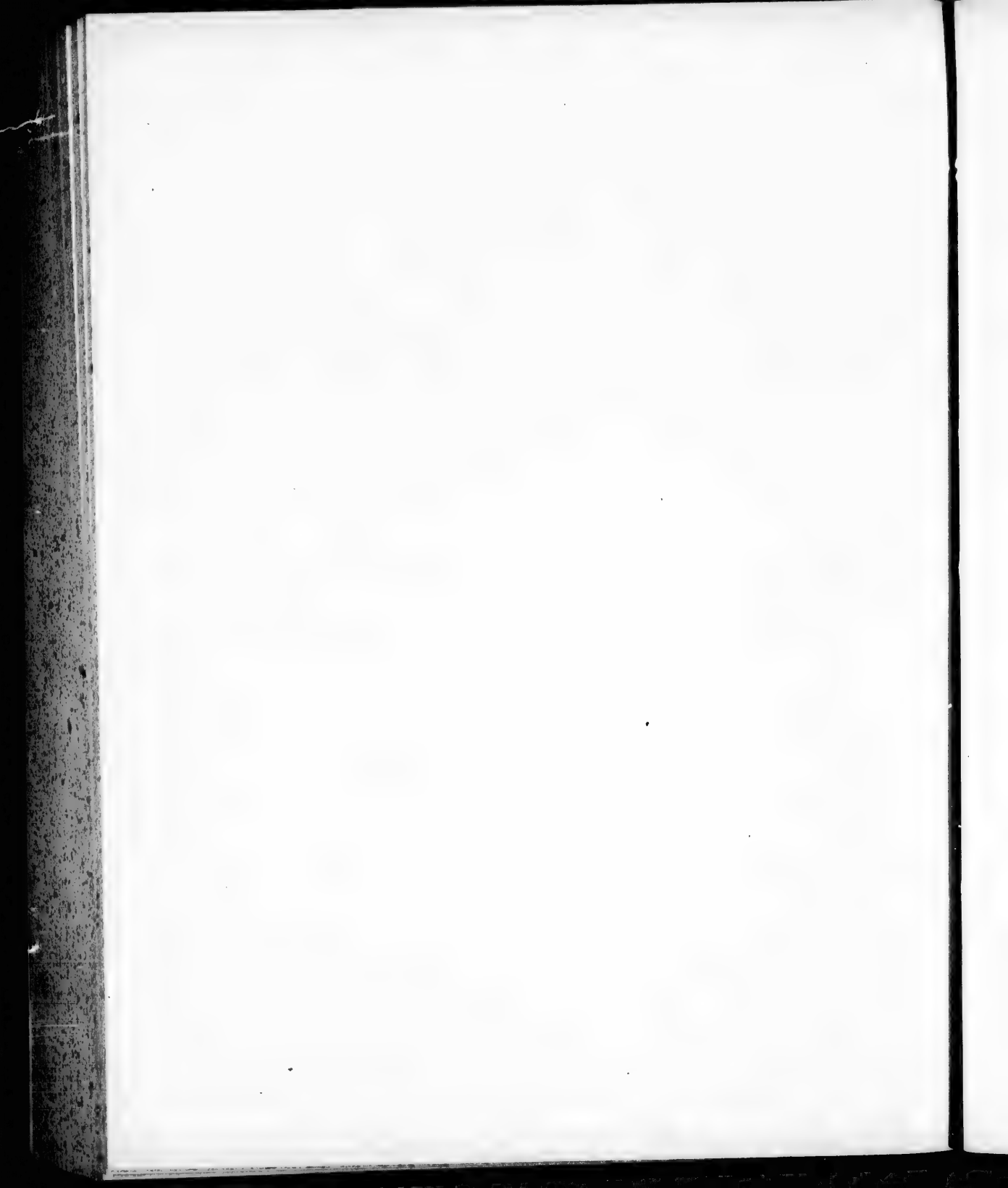
1. Because the Decree is against law and evidence.
2. On the ground of the improper reception and rejection of evidence by the Worshipful Judge.
3. On the ground of undue influence by those supporting the Will.
4. On the ground of undue and improper influence by H. A. N. Kaulback in obtaining the Will.

5. On the ground of undue and improper influence used by H. A. N. Kaulback and his wife and family. 9390

6. Because the Testator was not at the time of the making the last Will, of a sound disposing mind and memory.

7. Because deceased was not in relation to his cousin Charles Beamish and his daughter, and the other petitioner and his aged nurse, to whom he had shortly previous bequeathed a portion of his property of a free and disposing mind and capacity and of a sound and unbiassed judgment and understanding.

8. Because the said Testator was not aware of the effect of the terms of the said Will as



became evident shortly after the execution thereof, by his own declaration in evidence and the same cannot be regarded as the deliberately formed and intelligent purpose of deceased.

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9. Because those who would support the Will have not shewn that Testator had the capacity to form and did deliberately form an intelligent and unbiassed purpose of excluding the Petitioners from the share in his property bequeathed to them in April, 1875.

10. Because the onus in this case was on those upholding the Will.

11. Because the reasonable grounds for contesting the Will admitted in the decree were supported and strengthened by the evidence, and were not removed by those upholding the Will as required by law.

12. Because owing to the relation existing between Testator and his guardian Solicitor and Attorney, the respondent Kaulback was not in a position to draw direct or promote the revoking of the Will bequeathing property to petitioners.

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13. Because the conduct of the Honorable Henry A. N. Kaulback, in his relations to the Testator in supplying him with ardent spirits, in taking possession of his letter, in removing his nurse without consulting his friends and relatives, in secretly promoting the change in the former disposition of property to Petitioners and Testators aged nurse, after notice that such change would be contested was fraudulent and deliberately designed to obtain possession of Testators property and his explanation of such conduct is evasive, unsatisfactory and obviously false in view of the other evidence adduced.

14. Because the evidence shows—

(1) That deceased, a retired Barrister of the Supreme Court, was old and infirm, and in a very declining and ill state of health, partially blind and addicted to the use of ardent spirits, and was in this state, by his own consent and by the desire of his cousin Charles Beamish, under the care and attention of a nurse—engaged to watch over and attend him in his declining years.

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(2) That while under such care the respondent, Hon. Henry A. N. Kaulback also a Barrister of the Supreme Court, continuously supplied him with an inordinate quantity of ardent spirits, namely, two gallons of Rye whiskey per week.

(3) That deceased had contracted from senile and mental disorder, a disease, insane and uncontrollable passion towards the wife of said Kaulback.

(4) That deceased had no confidence in the integrity of said Kaulback, but the latter had acquired a dominion and influence over deceased by taking advantage of his condition, and said circumstances, and supplying him with the means of further weakening his mind and body.

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(5) That deceased placed his affairs in the hands of said Kaulback with a statement of the same, and said Kaulback stood to him in the relation of adviser, and acted, in fact, as his legal attorney and solicitor, and business agent and guardian.

(6) That deceased was treated by said Kaulback as (and as the fact was) incapable of managing his own affairs, and said Kaulback, while acting in such capacity, exercised decided and positive acts of influence and control over, and became seized permanently of the possession and control of the person and estate of testator.

(7) That under the above circumstances and said relations existing in the fall of 1875, Charles Beamish, the cousin and friend of deceased (deceased having in the previous month of April made said Beamish his sole executor with bequests to Beamish and his relatives) warned said Kaulback against improperly inducing said deceased to alter this Will.

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(8) That said deceased had frequent attacks of illness during the summer of 1875, and a most severe prostrating and violent attack in the beginning of November, which ended shortly afterwards in paralysis of the brain; that during said severe illness said Kaulback, who had been privy to the making of numerous wills by testator subsequent to April, and notwithstanding the notice of said Beamish, and said Kaulback still sustaining said above relation to said testator, without the intervention of an independent solicitor or adviser, and while said testator was laboring under said senile and diseased passion towards the wife of said Kaulback, and being at the time under a mental delusion as to the said Charles Beamish, prepared the draft of the Will in question, giving the whole of his property to said Kaulback and his family, and revoking the bequests to said Charles Beamish and his daughter, and the other petitioner and the said nurse, and procured the same to be engrossed and executed.

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Whereby and by reason of the premises, the said Will is and ought to be decreed and declared to be void.

HALIFAX, the 28th day of March, A. D., 1877.

ROB. L. WEATHERBE,

Proctor of said CHARLES BEAMISH and HENRIETTA JAMES.

Appeal allowed.

(Sd)

GEO. T. SOLOMON,

Judge of Probate.

COURT OF WILLS AND PROBATE.

COUNTY OF LUNENBURG.

In the matter of the proof in solemn form of the alleged last Will and Testament of Beamish Murdoch, late of Lunenburg, in the County aforesaid, Barrister, deceased :

I, William H. Owen, of Lunenburg, in the County of Lunenburg, Attorney-at-Law, and the proctor of the Respondents herein make oath and say as follows, viz :—That a dedimus protestatem was applied for by petitioners for the purpose of obtaining the rebuttal testimony of Charles Beamish and Mrs. William Morton to the granting of which I this deponent objected. I further say that no notice of the intention of said petitioners or their proctors to take the examination or depositions of said Charles Beamish or Mrs. William Morton under said writ of Dedimus protestatem was ever served on or received by me, or on or by any of the respondents or any person else on their or my behalf to my knowledge. That the first intimation I had of any such intention was by a telegram purporting to be from William Howe, Esquire, Registrar of Court of Probate, about four o'clock, p. m., on Wednesday, the twenty-second day of November, instant, to which I replied as follows, by telegram : " I protest against evidence taken under Writ Dedimus. It and preceeding thereunder illegal, Have not received notice." That I as proctor of said respondents was entitled to ten days notice of the intention of said petitioners to take said evidence previously to the day named therefor, which said notice I did not as aforesaid receive, and I further say that I was not legally notified to attend, nor could I have attended the examination of said witnesses in Halifax on Saturday, the twenty-fifth instant, and attended at the opening of this Court to-day, as it was necessary for me to do.

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(Signed)

WILLIAM H. OWEN.

Sworn to at Lunenburg, in the County of Lunenburg,
this 27th day of November, A. D., 1876.

(Signed)

GEORGE T. SOLOMON, *Judge of Probate.*

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STATEMENT

RECEIVED FROM B. MURDOCH :

Dec. 12, 1874—Deposit received on Bank of B. N. America.....	\$7,000
1st Feb., 1875—Sent B. M. Cash—which received from the above.....	400
	<hr/> \$6,600
19th March—Cash to B. M.....	400
	<hr/> \$6,200
27th April—Miss Parker's Bill of Exchange sent to B. M.....	\$710
Cash	90 800
	<hr/> \$5,400
The balance \$5,400 was invested by C. B. in the name of B. Murdoch as follows :	
A. Robertson's mortgage, 20th April, 1875, 7%.....	\$2,400
J. H. Nisbett's, 20th April, 1875, 7%.....	1,000
John McCrow, 24th March, 1875, 7%.....	1,000
Peter LeNoir, 6th May, 1875, 7%.....	1,000
	<hr/> \$5,400

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The above statement is correct.

In the Supreme Court,
10TH DECEMBER, 1878.

IN RE-BEAMISH MURDOCH'S WILL.

This appeal from the judgment of the Court of Probate at Lunenburg, affirming the Testator's last will, came before this Court for argument, when the minutes of evidence having been read for an hour, it was found that it would take three days to go through them, and thereupon it was agreed that the counsel should send in their respective briefs, and that the whole case should be considered in vacation. This has been done and I have now to pronounce decision.

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The Testator died in Feb., 1876, having made four wills in 1875; the first while he was residing at Mr. Chas. Beamish's in Halifax on the 6th April; the 2nd on the 21st, and the third correcting some mistakes on the 27th August; and the fourth now in dispute on the 15th of Nov. It is material to consider the first will for two reasons, first, because Beamish states that Testator's mind appeared at that time to be perfectly clear, and second, because with legacies of \$3000 to Beamish, whom he calls his best and tried friend, of \$1000 to his daughter, of \$1000 to his sister-in-law who was no relation, but was at the time an object of his affection, and \$200 to Peck his house-keeper while at Lunenburg for her attention to him in severe illness, he bequeaths \$4500 in trust for Mrs. Kaulback to her separate use for life, to be divided at her death among her children then living. These sums exhausted his whole estate, or went somewhat beyond it. As the will of 15th Nov., contains none of these legacies, and gives the whole estate to the Kaulback family, it is plain, if it be upheld, that an entire change had taken place in his regard for the Beamishes, of which indeed there is abundant evidence on the minutes to be hereafter noted.

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The will of November is attacked upon two principal grounds—the incapacity of the Testator from weakness of body and mind, from *senile dementia* as it is called, to understand and execute a will; and secondly, delusion, an insane attachment and desire for Mrs. Kaulback, and the exercise of undue influence on the part of the Kaulbacks and the excessive supply of intoxicating liquors with that view.—These, I need not say, are very serious charges, and we shall find the evidence upon them in the last degree contradictory and irreconcilable. I shall not pretend to go through this evidence in detail, but shall review its leading features, marking the lines from which I derive it in the margin of my opinion. First of all, let us look at the execution of the will as proved by Mr. Solomon, County Surveyor and Treasurer, and Mr. Wentzell, a J.P., who had been in the habit for some years of drawing and witnessing wills. (138). Those two are the subscribing witnesses. Solomon says, "on the 14th Nov., Testator handed me the draft of the will." The witness copied it with alterations suggested by Testator, and read it to him clause by clause, embracing the alterations. He took it home and engrossed it. It was executed next day and the witness says "I swear Testator's mind was calm, rational and clear. (175). Mr. Wentzell and I left the house together. Testator at that time appeared to be calm, pleasant and self-possessed, and in fact was so." (245.)

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Wentzell says "at the execution Testator overhauled the will as if he read it until he was to end—I think from 15 to 18 minutes—he put his finger along every line or the greater part as he went along—he said he was very thankful, because his eye-sight was very good that morning—better than for some time—it was a fine day. When he had finished reading it, Mr. Kaulback

(Senator) came in. The latter said "I understand you are about making Mr. Murdoch's will," and further said "you had better read it to Mr. Murdoch," which was done. As it was read clause by clause, Mr. M. responded "that's right." He then signed it putting his thumb to the seal, only the two witnesses and himself being present, and the witnesses signed it." (583, 600). Wentzell says, "Mr. M. was of sound mind and fully capable of making a will. I have not the least doubt of it." (635).

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The execution of the will is not assailed, and I need scarcely say that the above evidence is very material and independently of the general principle raises a legal presumption, that a Testator so executing a will knew its contents, and that it conformed to his intentions.—[1 Redfield on Wills 537.]

Pursuing the same course as the evidence, I shall now review it as it bears on the alleged incapacity of the Testator. The material witnesses on this point are Outram, Tobin, Beamish and the two Pecks.

Outram, a Halifax merchant, had known Mr. M. for twenty years and saw him in September, 1875. He says, "I found a great change in him from the last time I saw him. I handed him a letter from my father. I was greatly shocked at his appearance, he had changed so much. (1167). He seemed to be quite imbecile, did not know me." (1170). "I handed him the letter—he handed it back to me and asked me to read it to him, said he couldn't see. I read it to him and he did not seem to take any interest in it at all and made no comment upon it, his mind seemed to me to be gone."

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E. J. Tobin now deceased, had known Mr. M. from early childhood and been on intimate terms with him for eight years. Saw him in the end of October, 1875. Always considered him a remarkably clever man. He says, "I confess I was very much shocked to see the poor old man. I was shocked at his appearance; he did not appear to recognize me at first or to be able to keep up any connected conversation. The state of his body shocked me more than anything else—he was always neat and natty in appearance previously, but when he sat down I noticed that his face was unwashed, hair unbrushed and nails dirty. (1260.) That was my impression at the time; he was very feeble; I noticed it by his taking hold of pieces of furniture and steadying himself till he got to his chair; he took a pipe and lit it. He tried to keep it going. He was all slobbered over with spittle and looked very disgusting, so much so that I thought Mr. Beamish and Mr. Aikins had better take out letters of guardianship and look after him. I thought he was not able to take care of himself." In a further answer the witness says, (1295) "I don't think he could write, he was nearly blind, and he had given up reading; he couldn't see a letter; I watched him very closely." The evidence of these two witnesses I have given at large; they were intelligent and reliable and apparently disinterested, intimate friends, it is true, of Mr. Beamish, but incapable, one would think, of having their judgments warped in any way. We shall see, then, with some surprise, how utterly they are at variance with the other witnesses adduced by the respondents.

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The evidence of Mr. Beamish I shall refrain from citing in detail. It covers many printed pages, and on the point we are now considering is very decided. He says, "I observed a change in the mind of Mr. M. after April, he was very feeble and could hardly walk; he told me his hearing was getting bad; his eyesight was getting bad, and he was feeble both in mind and body." (1505). "In September I don't think he was capable of making a will; he appeared to me to be perfectly simple as a child. I could compare him to nothing else but a child in his whole appearance and manner; he appeared to be dull, heavy and silly; (1590) it left an impression on my mind that his mind was not sane. (1620) From September down to his death he was not, according to my judgment, in a fit state to understand or appreciate business matters. (1770) I asked Mr. Kaulback in Oct. to allow me to have

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a private interview with Mr. M. (they were then living together) which was granted. I never made a request of that kind which was not granted. Mr. M. was quite blind at that time, as he stated he could not see to read or write. (1895). I returned to Lunenburg in December and found Mr. M. in the same state as in October. Went over some business transactions with him. Made a statement of account of rents, etc. It was signed 13th September, by Mr. M. and myself. I did not consider he was capable, and he was blind. The only remark he made was that he was satisfied with what I had done." (1965, 1970)

The evidence of Mrs. Peck, the nurse, also represents Mr. M. as very feeble and childish; his person as if you would wash a baby; afraid of ghosts; unable to find his things; mislaying his watch; losing his tools in the garden. But this evidence, for the reasons I shall hereafter give, is subject to great suspicion. 9600

Peck, the daughter, says, "I heard Mr. Kaulback say in my presence that Mr. M. was childish and wasn't able to attend to his own business; that anyone could cheat him if they liked." (1870).

The evidence on the other side proceeds from the Rev. Messrs. Norwood, Ellis and Owen, from Dr. Jacobs, Messrs. Ross and Gaetz, Mr. C. E. Kaulback and Miss Petit. It offers a singular contrast to what we have just been hearing, and I shall extract from it a few of the most striking passages. Mr. Norwood speaks mainly of the month of June, 1875. He says, "I found Mr. M.'s conversation intelligent and his memory clear. The whole tone of his conversation and bearing indicated mental vigor." (3088, 3105) Mr. Ellis says, "Between the 1st of Aug. and the time of his decease I visited him once or twice a month, on an average, as one of the ministers of the parish. The state of his mind was very clear: he certainly knew what he was about. I should never have dreamed of thinking him an insane man. On religious matters he held his views tenaciously. I always looked upon him as a man of very strong will and determination. He argued clearly and logically. I always found his memory good. (3610, 3660) During the whole time of my acquaintance with him I never knew him to be under the influence of or affected by whiskey or liquor. (3655) I considered him perfectly sane on the subject of religion and Christ, as sane a man as I ever met, but I did not consider his arguments sound." I cite Rev. Mr. Owen, here, as the remaining clergyman. He had made acquaintance with Mr. M. in 1872, and saw him frequently up to 1876. He says, "I never knew him to be intoxicated or under the influence of liquor. During my conversations with him I found his mind very clear. In fact, he seemed master of every subject we talked of. He was a man of extraordinary mind. I never detected any change in his mind or mental powers from the time I first met him to that of his last illness. (8170) I never had any reason to believe, during all my visits and intercourses with Mr. M., that he was not capable of transacting business and thoroughly understanding the nature of the business in which he was engaged, except at the time of his illness in December, 1875. (8180) I never saw Mr. M. otherwise than very neat in dress and appearance. (8190) His memory was excellent with regard to history and his past political life. I saw no change in his memory." (8210) 9610

Dr. Jacobs also knew Mr. M. from 1872 to 1876, and was his medical attendant. He says "I was in the habit of visiting the house three or four times a week and socially in the evenings. Mr. Murdoch was very particular about his clothes and dress and about his cleanliness. (7655) When I first became acquainted with him in 1872, his mind was clear and sound. (7755) In Nov. 1875 his mind was as clear as when I first saw him in 1872. His mind on the 15th Nov. was sound and clear. He was that day capable of understanding the business in which he was engaged. His memory with reference to dates, &c., was very good. (7760). I never found him childish, or knew him to be guilty of a childish act—always to the contrary of that. I never saw him under the influence of liquor to my knowledge from 1872 to the time of his death. (7772) On the 18th Nov. he told me he had made his will 9630

a few days ago, and went on relating what was in it. He went on to mention that he had cut off, the Beamishes on account of their, especially Charles, annoying him so much, trying to get some property and some papers, and that he was so much annoyed that he had cut them off to a farthing.

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I shall extract a few passages more illustrative of Mr. Murdoch's habits and appearance. Mr. Ross says, that in Oct. 1875, his dress was clean and comfortable and very suitable for a man of his years—his hands and face were clean and nice as any gentleman's ought to have been—(3810)—he had a sane, clear mind. (3832) Being asked if he was firm or easily led, the witness answers "He was firm—I never knew Mr. Kaulback in any way to endeavor to influence him. I never knew him to unduly influence Mr. M." (3852).

So Mr. Gaetz says: "I never thought of anything else but that he was of sound mind. His memory was very good, he seemed to trace things very far back. (4030).

Mr. C. E. Kaulback says "I was in the habit of running in to see him in the summer and autumn of 1875." (That is at the time the Halifax visits were paid.) "He then displayed as much soundness of mind as before. He always attired himself neatly and clean. I never knew him to appear in the slightest degree childish or to do a childish action. I never saw him under the influence of liquor. His mind seemed to be perfectly clear on every subject that he'd speak upon, (7400) His intellect and memory appeared to be as clear then and sharp at the time I last saw him as when I first made his acquaintance.

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It appears, however, from Mr. M.'s letters that he was subject to fits of depression and of bodily weakness. Especially in his letter to Mr. Beamish 29th November 1875, written by Edna Kaulback to his dictation, these symptoms appear in a very marked degree, which it is difficult to understand. Still, I think we must come to the conclusion that so numerous and reliable concurrent statements coming from gentlemen of position with the most ample opportunities of knowledge, and confirmed by other witnesses independent of Mr. Kaulback himself, constitute not only a weight of evidence, but an irresistible weight in support of Mr. M.'s capacity to comprehend and his power to execute the will of 15th Nov., 1875. And if he had the intelligence and firmness imputed to him, he could not have been swayed by undue influence.

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That he was warmly attached to the Kaulback family, is apparent from all his acts and his repeated declarations, and I cannot but think that it is doing injustice to his memory to infer from some rash or thoughtless expressions a criminal and insane desire, and a deliberate purpose to disturb the domestic peace of those whom he regarded as his best friends. These are proved, besides, only by the nurse, who never possessed but had forfeited his confidence—and whose intemperate habits are proved by many witnesses, and there is reason to believe, consumed the large quantities of whisky too liberally supplied by Mr. Kaulback up to July, when they very properly ceased. It is impossible to believe, with the testimony of so many witnesses, that two gallons of whisky a week could have been used by Mr. M. himself, or by any one under his roof. This is one of the difficulties of the case—and so also is Mr. Murdoch's sudden antipathy to the Beamishes. I shall not attempt to go through the large amount of evidence on that score. It re-appears in at least a dozen passages. It does not display itself in the letters of the 22nd April to May 10th, and 24th June and 29th November, 1875, nor in Mr. M.'s assurance to Mr. Beamish that he had left him half his property. Yet, this antipathy, and the grounds of it, slight as they appear, are too often testified to be doubted. And if he was himself acting on his own convictions and impulses, the law gave him the right. A will, however capricious or harsh, cannot be set aside if it be the act of a volition, free and untrammelled. We must recollect, too, that the Beamishes did not stand in the same relation to the Testator as if they had been more closely connected. Assuming them to be cousins, as he himself repeatedly calls them, they have not the same claim in the eye of the law as

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if they had been brothers, nephews or nieces. Beamish and his daughters, for aught I know, may be his next of kin, which would be an argument in their favor.

The only point of any consequence that remains is the question of undue influence. All the English and American cases on this subject, up to the year 1869, which have been freely incorporated with the arguments sent in, are to be found in Redfield on Wills, 3rd edition, Vol. 1, 507 to 536, especially at pages 518, 20 and 30. Two of the English cases I shall introduce here, and invite attention; also, to the cases of Lovett vs. Lovett and Swinfen vs. Swinfen, both in 1 Foster and Finlayson, 551 and 584—the last a remarkable case of a will, sustained by a jury and upheld by the court.

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In the case of Stultz vs. Schaeffle, 18 L. and E. 576, decided in 1852, Dr. Lushington observed that in the question of undue influence, very little is to be found in the books, or could be expected to be found. Some dicta, he says, we have; for instance, Sir John Nichol, in the case of Kindleside vs. Harrison, 2 Phillimore, 551, observed that importunity, in its correct legal interpretation, must be in such a degree as to take away from the testator free agency. The same question was discussed in Williams vs. Gould, 1 Hagg 577, and Huddleson vs. Armstrong, 1 M. P. C. 478. The testator must be a free agent, having the power, if he had the will to do or not to do any given act.

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In Sefton vs. Hopwood, 1 F. and F., 578, Cresswell, J., directed the jury as to the law thus in 1855: "It is not sufficient, in order to make a will, that a man should be able to maintain an ordinary conversation and to answer familiar and easy questions. He must have more mind than suffices for that. He must have what old lawyers call a disposing mind; he must be able to dispose of his property with understanding and reason. The subject of undue influence as to the procuring of wills has been a good deal discussed of late years, and I think that the law, as at present understood, has somewhat modified the earlier opinions on the subject. The influence to invalidate a will is not the influence of mere persuasion. It must be an influence depriving the party of his judgment and his free action; it must be such an influence as induces you to think that the will, when executed, is not the will he desires to execute, that he does not benefit the parties whom he would wish to benefit, and therefore that is not his will."

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Then comes the case of Poyse vs. Rossborough, in 1857, 6 H. of L. cases, folio 43, when the Lord Chancellor said:

"If the person by whom a will is made, though good so far as relates to its execution and attestation, was not at the time it was made of sufficient mental capacity to enable him to dispose of his property, or if having sufficient disposing mind, he executed it under coercion, or under the influence of fear, or in consequence of impressions created in his mind by fraudulent misrepresentations—in none of these cases can the instrument be properly described as being his will."

"One point is beyond dispute, and that is, that whenever it has been proved that a will has been executed with due solemnities by a person of competent understanding and apparently a free agent, the burthen of proving that it was executed under undue influence is on the party who alleges it. Undue influence cannot be presumed."

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"The undue influence must be an influence exercised in relation to the will itself, not an influence in relation to other matters or transactions. But this principle must not be carried too far." And then he proceeds to modify it by a case which he puts, not applying to the present.

In 1859, in Hall vs. Hall, 1 L. R. P. & D. 482, Sir J. P. Wylde directed the jury in these terms: "To make a good will a man must be a free agent. But all influences are not unlawful. Persuasion, appeals to the affections, or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution, or the like—these are all legitimate and may be fairly pressed

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on a testator. On the other hand, pressure of whatever character, whether acting on the fears or the hopes, if so executed as to overpower the volition, without convincing the judgment, is a species of restraint under which no valid will ever can be made. In a word, a testator may be led, but not driven; and his will must be the offspring of his own volition, and not the record of some one else's."

Applying this last observation to the case in hand, I would remark that the circumstances of Mr. Kaulback having acted as the attorney or solicitor of Mr. Murdoch in a case having no connection with the will, appears to us of very little consequence; and that the fact, naturally leading to suspicion, of the draft of the will of 15th November, having been in Mr. Kaulback's handwriting is accounted for in his evidence where he says, referring to the will of 21st August, which was undoubtedly the testator's, "The first remembrance I have with regard to that will was about the first of November. Mr. Murdoch had it then lying on the table, in his library, with erasures and alterations, and he asked me to copy it. These interlineations and erasures were in his own handwriting. I followed exactly the paper as altered and amended. I sat down at a desk and Mr. Murdoch alongside when I copied it. He added to it verbally, which I followed verbatim as he gave it to me. In several parts of it he stopped me and added to it, I writing down his words."

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"After I had finished the copy, he asked me to read it over to him and I read it. He then requested me to engross it. He assented to it that it was correct. I declined to engross it and gave my reasons for it."

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With this definition before us coming from a master mind, what are we to say to the general scope and purport of the evidence I have cited. It has swollen to a volume of nearly 2000 fol's. but I am not aware that I have omitted any material fact. Mr. Kaulback's own testimony would greatly strengthen his case. He denies in the strongest terms the exercise of any influence whatever on the mind or dispositions of the Testator. The draft of the will he wrote at the instance of Mr. Murdoch with the alterations he suggested was founded on the will of Aug., 1875. There is no evidence of any deception or threat—of any coercion or criminal inducement held out, and we could not set aside the will of 15th Nov., on the ground of undue influence, without rejecting a vast body of evidence which no court can overlook. That of the Rev. Mr. Owen, of Dr. Jacobs and of the two subscribing witnesses, to say nothing of the others, it is impossible to disbelieve.

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Still the entire rejection of the Beamish family, the tone of the Testator's letters, the sudden change of his affections and his purpose and the evidence of Messrs. Outram & Tobin materially induced and justified this extended inquiry, and therefore while dismissing the appeal, I am not disposed to mulct the appellants in costs, but would direct each party to bear his own.

IN RE BEAMISH MURDOCH'S WILL.

DESBARRES, J.

I have read over the voluminous evidence taken in this case with a great deal of care and attention, and feel myself called upon, after full consideration, to express my concurrence in the judgment just delivered by the Chief Justice, being of opinion that although at the time the Testator executed this will the body may have been exceedingly weak, the mind was sound. I have known Mr. Murdoch, the Testator, from early boyhood, and from what I know of him I do not think he was likely to be swayed or influenced by any person in the disposition of his property. It has been very properly said that we must be governed entirely by the evidence, and looking at that alone I do not see how we can come to any other conclusion than that arrived at by the learned Chief Justice, after weighing the evidence with all the care the case demanded at our hands. There was certainly some ground to induce the parties claiming as devisers, under a former will of Mr. Murdoch, to institute the inquiry which has been made; but the evidence produced by them to invalidate his last will has, in my view, been outweighed by that brought in support of it, which must for that reason be sustained. I think, however, that under the circumstances each party ought to bear his own costs.

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IN RE BEAMISH MURDOCH'S WILL.

MCDONALD, J., was not present at the argument.

SMITH, J. Upon the same principles that have governed the Chief Justice in coming to his judgment, I feel constrained to concur. What we may know outside of the evidence on the record cannot influence us in coming to our decision, and on looking at the evidence, as I have done, very carefully, I find the weight of it to be of such a character as to constrain me to concur in the judgment of the Chief Justice. But I dissent from both of the opinions that have been delivered on one point, in that I think the costs should be paid out of the estate.

JAMES, J., delivered the following oral judgment: I concur in the opinion expressed by my learned brother, Smith, that though the judgment should be for the appellee, the costs, in the very remarkable circumstances of this case, should be paid out of the estate. I would have preferred delivering a written judgment, but the evidence is very voluminous and contradictory, and it was requisite that I should examine a large number of legal decisions bearing upon it. It was only at the last moment that, with considerable doubt and difficulty, I have arrived at the conclusion that the will ought to be sustained, and I have not since had time to prepare a written opinion.

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The portions I wish to establish are that the case has come properly before us, that the appeal was not only justifiable but absolutely necessary, that the case required the investigation of the best legal minds of the Province, which it had not previously had, and that to have allowed the matter to rest on the investigation it received at Lunenburg would have been most unsatisfactory, I am sure very much to the learned Judge for that County, by whom the decree was given.

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In order to establish these portions which, if they are sound, necessarily entitle the appellant to have the costs paid out of the estate, I must give a sketch, very incomplete of necessity, of some of the principal points of the evidence; and in so doing I shall confine myself almost exclusively to

the documents in proof and the evidence of Mr. Kaulback, the party in favor of whom and of his family the will was made, for the simple reason that he is better informed than any one else as to what took place between him and the deceased testator, because he is the party mainly interested in sustaining the will, and because the doubts I entertain as to its validity are more strongly sustained by his evidence than that of all the other witnesses together. He is besides not only a lawyer but a man of intelligence and position.

I shall not refer to the history of Mr. Murdoch previous to 1872, when he first went to reside at Lunenburg, further than to observe that it appears by the evidence that he was a literary man of intemperate habits, had never been married and had resided during most, or all of his previous life, in Halifax; his nearest relatives here being his cousins Charles Beamish and his brothers, and Mr. T. Aikins.

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He went to reside in Lunenburg in 1872, being then at least 72 years of age. The witnesses differ considerably, as to his apparent age, but 75 was the age placed on the lid of his coffin, and we have evidence, of which we can take judicial notice, that he was not of less age, inasmuch as he was admitted as an attorney of this Court, as appears by our records, in 1821. By law he could not be admitted until 21 years of age, so that he must have been born at least as early as 1800. He was a small, thin man, and not at all robust or of active habits.

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When he went to Lunenburg in 1872, after residing some time at a hotel, he purchased a house, in which he resided, from Mr. Kaulback, with whom and his family he was exceedingly intimate while in Lunenburg. In the spring of 1874, owing apparently to some difference with Kaulback, he sold his house and removed to Halifax; but returned to Lunenburg after a few months, during which he was a good deal at the house of Mr. Beamish, the appellant. Indeed, there had been a very long and close intimacy between Murdoch and his cousin, Beamish. On his return to Lunenburg he had an interview with Kaulback, and asked K. to take him into his house as a boarder. I give Mr. Kaulback's reply in his own words (line 1152): "I remember two objections I raised; 1st, that he had been an old bachelor so long that he might not care to conform to the rules of my house. In the next place I said it was beneath my dignity to take him as a boarder or lodger, and that parties might say that I got him there to get his property." So he resolved to go to housekeeping, and Mr. Kaulback sold him another house.

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This conversation took place on his return from Halifax, in the autumn of 1874. Seven or eight months before the making of the first of the five wills, of which we have any evidence. In that will he left Mr. Kaulback's family half of his property. This conversation contains the first mention we have in the evidence of any such idea as Murdoch leaving any property to Mr. Kaulback; and it is noteworthy that the first suggestion came from Kaulback. It proves, at least, that such a possibility had occurred to his mind. As for that possibility being an objection to taking him as a boarder it seems strange (and the significance of this remark will presently appear) that if taking him to board for a pecuniary equivalent was open to that objection, Mr. Kaulback taking him to board at his table *gratis* would be much more so. Let us see from Mr. Kaulback's testimony (4164) what were the relations which immediately after subsisted between them, and continued until shortly before his death. "From the time Mr. Murdoch came to Lunenburg, in 1872, up to the time I left for Ottawa, in 1874, he was constantly, I may say daily, at my house. He was often to breakfast, yet oftener to dinner, and was never absent from tea, unless from some particular reason; and he would generally give the reason for his absence. From the time he returned from Halifax, in autumn, 1874, up to the time of my fire, in 1875, he was more frequently to my house to breakfast and dinner even than he had been previously. In fact, he had the run of my house; he'd go from the parlor to the kitchen, up stairs and into the garden frequently, with

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" Mrs. Kaulback. He'd go out weeding and superintending and pruning the plants sometimes. 9850
 " I think two-thirds of the time he was at my house (that is of the time people are out of bed). He
 " was in the habit of spending the evening at my house. Whenever Mrs. Kaulback or I drove out
 " he was generally one of the party."

Mrs. Peek had said (2078) that she was in the habit of undressing him and putting him to
 bed, but Kaulback denies this in these terms (4035): " I saw him more than half the time go to
 bed myself, and undress himself." So that Mr. Kaulback was in the habit some half or two-thirds
 of the time of seeing him home at night and in bed, as well as entertaining him through the day.
 (4975). His plate was regularly set for him at table; so that he was not only treated as a boarder
 but was allowed privileges not usually accorded to boarders—and all this without any charge.
 This state of affairs is more than abundantly confirmed by Mr. Kaulback's children and servants, 9860
 who were examined as witnesses.

But the kindness of Mr. Kaulback and his family to Mr. Murdoch did not end here. Mr.
 Kaulback was his banker, and lent him money from time to time as he required it, for which, and
 for the value of liquors imported on joint account, or supplied to Mr. Murdoch out of his cellar, Mr.
 Kaulback took his note of hand, of which, at the time of his death, he held to the amount of about
 \$1,000, (6089) all incurred within eighteen months of his death. Mr. Kaulback once expressed
 surprise to Beamish as to what Murdoch, who had a net income of \$600 a year could do with all
 his money. If we could place implicit reliance on Mrs. Peek's evidence, which is open to suspicion
 from her ignorance and intemperate habits, we would have no difficulty in solving the mystery;
 (2208) but I don't consider it very material. Mr. Kaulback was also Mr. Murdoch's solicitor. He 9870
 defended him in an action at law, he assisted him in making his arrangements with Beamish, (1675),
 he declined, it is true, to accept a general power of attorney (6180), but he accepted the charge of a
 schedule of his securities and property (5064), and took part, more or less, by advice and otherwise,
 in the preparation or execution of no less than four different wills, made by Murdoch between June
 and November, 1875. Murdoch had no other solicitor, and Mr. Kaulback undoubtedly filled that
 position in fact, though perhaps not for specific pecuniary reward.

Mr. Kaulback also supplied Mr. Murdoch with the greater part of his liquors out of a cask
 which he imported for their joint use. (5912.) It is undeniable, from the evidence of three witnesses
 (2745, 2768 and 2880), which is not contradicted by Mr. Kaulback, that he received from Mr. Kaul-
 back's cellar two gallons of whiskey per week, besides champagne, sherry and claret, the quantities of 9880
 which are not given. (4200, 5190, 6505). Besides this Mr. Kaulback's evidence shows that he was
 sued for \$54.60 (5108, 5802), for brandy procured by him from Mrs. Metzler, in the months of May,
 June and July, 1875, inclusive.

What became of his liquor? Some small portion of it, doubtless, was used in treating, very
 moderately, the two or three gentlemen who occasionally visited him; and there is reason to believe
 that Mrs. Peek used a part of it; but making all allowance for these it is clear that Murdoch drank
 at his own house, at least two bottles of whiskey per day. The quantity seems amazing for a man of
 seventy-five and not at all robust. But our astonishment is increased when we consider that he was
 at Mr. Kaulback's house every day, from the forenoon until bedtime, and often from the morning.
 He was there, Kaulback says, two-thirds of his waking time. Surely he did not carry his liquor to 9890
 Kaulback's house to use it there. It is evident, I think, that he consumed this marvellous quantity
 at his own house, and it is not possible to believe that in the other two-thirds of his waking hours,
 when he was at Kaulback's, he did not continue to use that which was indispensable to keep him up
 to the standard of conversation and argument, so fully and minutely described by Mr. Kaulback and

other witnesses. It is evident that liquors were used freely in the house and given by Kaulback to his visitors. Mr. Murdoch was not excluded when others were partaking, and Mr. Kaulback certainly did not keep his closets locked or his decanters sealed against him. On the contrary, I think we may presume from the evidence that liquors, as well as everything else in the house, were at the disposal of Mr. Murdoch as freely as of Mr. Kaulback himself. He was habitually under the powerful stimulus of spirits. When otherwise, he was as when seen at his house by Outram, Tobin and Beamish and described by them, by Mrs. Peck and others—dejected, weak, tottering, dirty and imbecile. He must have used the liquor as De Quincey used opium, to bring himself up to a standard of intelligence and mental activity—then when he was fit to see company he would receive a friend at home or go up to Kaulback's. It was in this condition that he was seen by the three clergymen who never saw him intoxicated. Had they seen him when quite sober they would have seen him as he was seen by the other equally reliable witnesses, who give so different a description and who, from their previous acquaintance with him, were better able to discern the effects upon his mind and body of such excessive indulgence. This is the only way I can reconcile the very conflicting testimony, and I think it is the true explanation.

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That Murdoch was at his best when he had consumed a large quantity of spirits is quite consistent with what we know of the biography of men eminent in philosophy, in oratory and in poetry. In the golden days of English parliamentary eloquence, the days of Pitt, Burke, Fox, Sheridan and Brougham, the most splendid efforts were made, when the speakers were under the powerful influence of intoxicants. But for brandy and opium we would not have had Childe Harold and De Quincey poured forth in rapid succession his brilliant literary fragments, wonderful alike for their learning and art, logic and pathos, when he was consuming enormous quantities of opium. The case under consideration—unusual indeed but by no means unprecedented—is quite inexplicable unless we take into consideration the wonderful extent to which the human system may be trained to withstand the ordinary effects of intoxicants, the brilliancy of intellect which they produce when not partaken of beyond the point of artificial endurance produced by constant and acquired habit, and the terrible reaction, producing dejection, despair, or idiotcy, when the exciting cause is withdrawn or materially diminished. The former was his usual state when seen by strangers, the latter when seen by Outram and Tobin.

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It does not appear that Murdoch frequently exceeded the quantity necessary to stimulate him to the point of highest mental activity. We have few instances given in the evidence of his indulging to the point of absolute drunkenness, nor does it appear that he was incited to drink to excess by Kaulback or his friends; on the contrary, the powerful influence which Kaulback had over him was exercised, with good effect, in preventing him from indulging to that excess. (6304).

This was the condition of affairs until Kaulback's house was burned in July, 1875. He and his family were then invited by Murdoch to share his house, which they did until his death, in the following February. We know that during that time the house was supplied with liquor, imported for the joint use of Murdoch and Kaulback, and his habits appear to have continued the same until his decease.

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During the period while his habits were such as I have described—that is between April and November, 1875—he made no less than five different wills. He paid a visit to Halifax in April, 1875, and while there he prepared his will (No. 1), which appears to have been his own voluntary act, in which, in substance, he bequeathed half his property to Charles Beamish, the appellant; and the other half to Beamish, in trust, for the separate use of Mrs. Kaulback and her family; constituting Beamish his sole executor and trustee, with full powers. In this will he calls Beamish "my best and tried friend, my cousin, Charles Beamish." There can be no doubt this will expressed the true

state of his feelings at that time, and so far as Beamish was aware at the time, his feelings continued the same during his life. We find in the evidence his letters from Murdoch to Beamish between the 22nd April and 29th November; the last being subsequent to the making of the will in dispute; in all of which he addresses him as "your affectionate cousin," "ever affectionately yours," or words to that effect. 9940

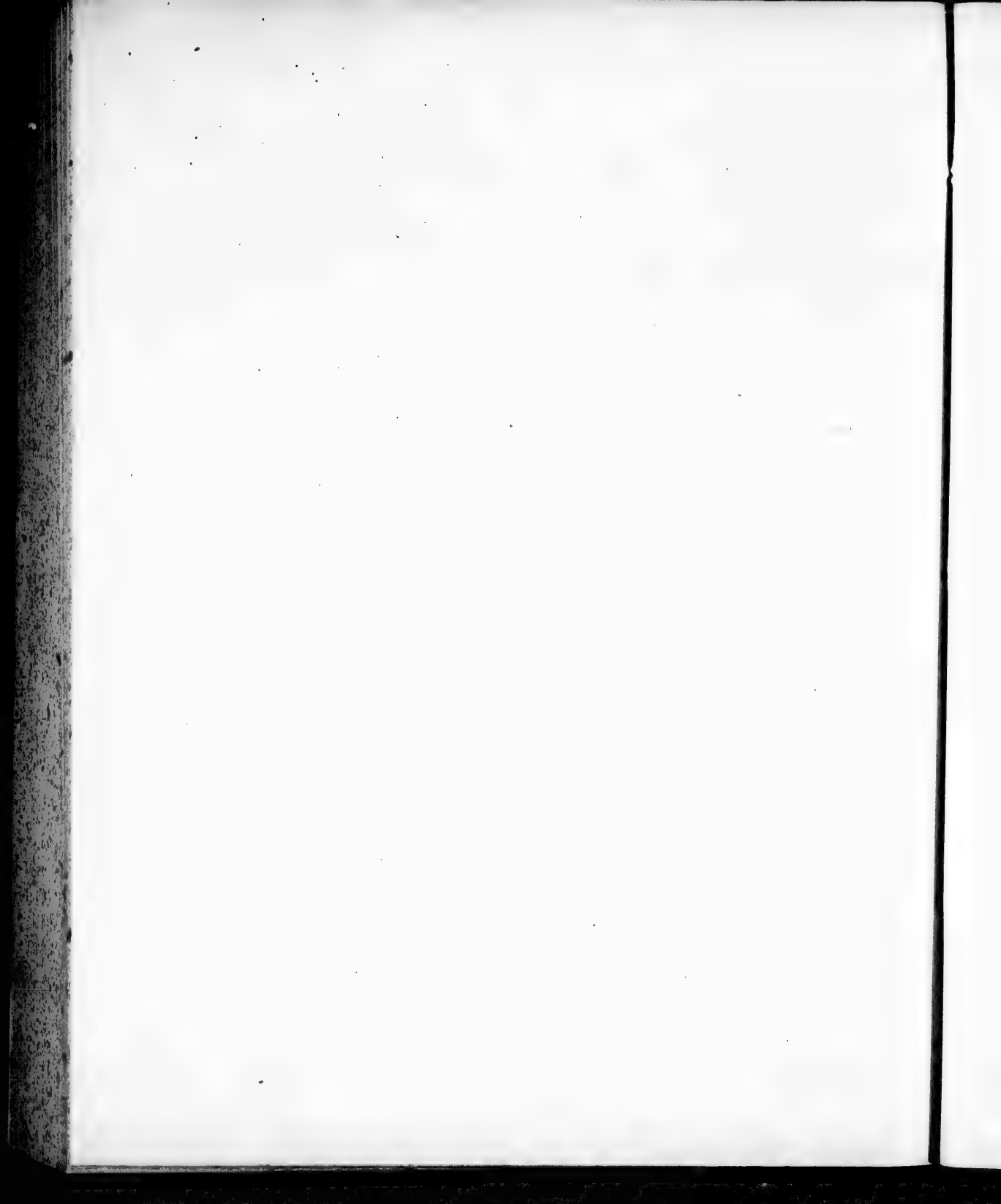
In these letters, which are eloquent and reliable witnesses in the cause, he speaks of his wretched health (which during that period seems to have been very indifferent and precarious), his business, his feelings; he entrusts to Beamish numerous kind offices, large and small, expresses repeatedly his great gratitude and confidence, and urgently invites him to visit him at Lunenburg, which he did on several occasions. Even after he had made the will in which Beamish's name was not mentioned he told him he had left him half his property (1690), this leading him to believe that his will of 6th April had not been changed. During one of these visits—in September—Beamish settled all his pecuniary transactions with Murdoch, to his satisfaction, and to the satisfaction of Kaulback, who assisted Murdoch, and who counted the money at Beamish's request, as the latter did not consider Murdoch qualified to transact business, so much so that he cautioned Kaulback against all wing him to make another will (1567), though this is denied by Kaulback. 9950

I have already stated that Murdoch made a will (1) in Halifax in April, leaving his property, one half to Beamish and the other to Mrs. Kaulback, shortly afterwards he returned to Lunenburg, leaving the Beamishes on the most friendly terms. His next will (having been previously prepared, by whom we are not told), was executed at New Ross, in Lunenburg County, in June. He had gone there with Mrs. Kaulback and her family to a wedding. Mr. Kaulback was not present, but Murdoch had communicated to him a month previously (4620, 4630) that he intended to make an alteration in his will to the prejudice of the Beamishes. On his return from New Ross he handed it, sealed in an envelope, to Kaulback for safe keeping. 9960

By this will (No. 2) Murdoch left, substantially, three-fourths of his property to the Kaulbacks and one-fourth to Beamish, still calling the latter his "trusty cousin" and naming Kaulback and Beamish as executors. This will was defaced by Kaulback's fire and required to be re-engrossed, which was done by Mr. Kaulback's clerk, under Kaulback's directions, at Murdoch's request, omitting a small legacy to his housekeeper, Mrs. Peck, which had been contained in the two former wills. This will (No. 3) was dated 21st August. Kaulback attended to its due execution. (4665).

A necessary clause having been omitted in the 3rd will (4695) it was re-engrossed and executed 27th August—the two former wills, Nos. 2 and 3, being destroyed (4708)—but a copy of the will No. 4 is annexed to the evidence, from which we can gather the contents of these three wills (Nos. 2, 3 and 4), which were substantially the same as far as regards Mr. Beamish. The fifth and last will was dated and executed on 15th November; it leaves his whole property to Kaulback and his family, omitting all mention of Beamish, and makes Kaulback and Mr. Owen his executors (p. 3). The draft was in Mr. Kaulback's writing, and beyond doubt he interested himself actively in relation to its preparation and execution, as appears abundantly from the whole of his own evidence as well as that of the subscribing witnesses. 9970

Murdoch was intelligent at the time, and I have no doubt fully understood what he was doing. The question now arises whether, upon the evidence as I have so far stated, there is anything to invalidate this will, and I feel bound to answer, after a careful examination of the cases, in the negative. *Hanley vs. Stacey*, 1 F. and F. 574; *Walkem on Wills* 76, 77, 113 (i); *Easby vs. Foster*, Law Times, 29th July, 1876, and cases *Boyne vs. Bosborough*, 6 H. of L. Cas.; *Walkem* 144 (l). 147, 155 b, 156 (d) and cases *Walkem* 118 (4) (5). That Kaulback and his family exercised great influence 9980



over Murdoch is the necessary deduction from the evidence of all parties. That Kaulback boarded him *gratis*, supplied him with his liquors, was his banker and confidential adviser, and he and his family provided him with the society he so much needed, is certain; and as certainly they exercised over him a corresponding and powerful influence. But all this under the law, which is well settled, is no ground for setting aside the will. If they had gone further and solicited him to provide for them, to the exclusion of his relatives, even that would not have been a sufficient cause. These are "influences," certainly, but not "undue influences." It would be an unfortunate circumstance for the sick, the aged, the imbecile and the desolate if they were deprived of the protection, the kindness and society so often, and most properly, rendered to them in the hope of a testamentary provision. Neither is the fact of Murdoch's intemperance any ground provided he was himself at the time of execution, and knew, as I think he did know, clearly and intelligently, the effect of what he was doing. Had he indeed executed a will under the influence of either such an excess of stimulus as to produce actual drunkenness or of the reaction which must have followed a total cessation of the excitement, there might have been room to doubt; but I infer from the evidence that he was not in either of these conditions, but in his usual state of strong but intelligent excitement.

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There is, however, one view of the case which has created very strong doubts on my mind.

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I have already said that Kaulback had necessarily, under the circumstances, a very powerful influence over Murdoch. This abundantly appears throughout the evidence. If that influence was exerted to produce false impressions on his mind as to the conduct of those whom he had previously recognized as his nearest relations and best friends, with a view to induce him to disinherit them and substitute himself and his family as legatees of his whole property, that would be an undue, because fraudulent, influence under the decided cases. I have already referred to the previous lifelong intimacy between Murdoch and Beamish, and his recognition of this in the most kindly manner in the correspondence extending from the time of his removal to Lunenburg in 1874 down to a period subsequent to the execution of this last will.

But it is evident that from a period antecedent to the last will there was a hostile feeling growing up in his breast against Beamish and his relatives, well known to Kaulback, but concealed from them (5392). This is perfectly evident, not only from the testimony of Kaulback, but it is clearly proved by Rev. Mr. Ellis (3457, 3660), by Rev. Mr. Norwood (3157, 3260, 3330), and by Mr. Ross (3814, 3908), and this feeling, coupled with the extreme kindness of Mr. Kaulback towards him, undoubtedly contributed to his utterly excluding Beamish from his testamentary beneficence. Now, it is singular to observe how often his grievances against Beamish formed the subject of conversation between Murdoch and Kaulback. I find the latter giving accounts of many different conversations on this topic, viz.: on lines 4186, 4620, 4961, 5250, 5330, 5340, 5390, 5581, 5635, 5641, 5668, 6180, 6570. By these statements of Kaulback it is evident that these fancied (for there were no real) grievances against Beamish formed a constant topic of conversation between them. In all of those which I have enumerated, Kaulback, who is the only living witness of what took place, tells us what Murdoch says, but no where does he tell us what he said himself in reply. He must have said something. But he neither admits (with the exception I shall presently mention) that he encouraged what he must have known to be a delusion; nor does he say that he in any way discouraged it. In this very important particular the evidence is deficient. There was one occasion, however, on which he gives us briefly his share of the conversation. Kaulback had, from instructions given him by Murdoch, which were not produced, having been (I think unfortunately) destroyed by Murdoch, prepared a draft of the will of 15th November. He says (790, 800): "After I had finished the copy I had made from the "paper he handed me, and from the suggestions he made to it (*sic*), he asked me to read it over to

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" him, and I read it. He then requested me to engross it. He assented to it that it was correct. I 10030
 " won't say it was just what he wanted. He approved of it, said it was right. I can't remember every
 " word he said. *I declined to engross it. I told him that he knew well the conduct of Beamish*
 " *and what Beamish had said to him, and it was right I should not have anything to do with*
 " *making his will.*"

If this was a sample of what he said to Murdoch in his previous conversations. If with the powerful influence he must have had over Murdoch from the circumstances I have mentioned, he was continually nursing an unfounded delusion on the mind of a man habitually excited with intoxicants. If there were clear evidence to that effect I could not sustain the will. Here we have Kaulback at the very critical moment when he and Murdoch together were engaged in framing, by their joint efforts, a will to take from Beamish even the fourth part of his property which had been given to him 10040 by the three prior wills and give to Kaulback and his family the whole of the property, pointedly reminding him of his fancied grievances, as if in fear that Murdoch would forget them, and again change his mind. This circumstance, given to us by Mr. Kaulback himself, has affected my judgment so much that it is only with great doubt and hesitation that I have been enabled to sustain the will.

If I am justified by the evidence in entertaining these doubts, surely this was a proper case for a full discussion in this court. The parties could not, in such a case, have been expected to rest satisfied with the decision of a Judge of a County Probate Court, however venerable in years and honorable in reputation. More especially do the decided cases sustain the appellant's right to have the costs paid out of the estate when the doubts which exist, even if not well-founded, were created in the minds of his relatives by the conduct of the testator himself. I refer especially to the fact that by his 10050 letters and his declarations to his relatives shortly before his death he led them to believe that he had not altered his will in their favor made in April. In these circumstances I would have considered the counsel for appellant deficient in the performance of their duty to their client had they not appealed to this court; and therefore I cannot but think that the costs should be paid out of the estate.

I have omitted reference to many minor but important points in the evidence which I could not introduce without largely increasing the prolixity of this opinion.

IN THE SUPREME COURT, 1879.

LUNENBURG, SS.

In the matter of the proof in solemn form of law of the instrument bearing date on the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, purporting 10060 to be the last will and testament of Beamish Murdoch, late of Lunenburg, in the County of Lunenburg and Province of Nova Scotia, Queen's Counsel and Doctor of Civil Law, &c., deceased.

On motion, and after argument, it is ordered that the appeal from the decree of the Judge of Probate for the County of Lunenburg be and the same is hereby dismissed, and that the decree of said Judge of Probate herein dated the tenth day of March, A. D. 1877, be and the same is hereby confirmed.

Dated at Halifax this 23rd January, 1879.

On motion of Mr. MacCoy, Q. C., }
 Counsel for Appellee. }

By the Court,
 (Signed) M. I. WILKINS, Prothy.

IN THE SUPREME COURT.

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HALIFAX, SS.

In the matter of the proof in solemn form of law of the instrument bearing date on the fifteenth day of November, A. D. 1875, purporting to be the last will and testament of Beamish Murdoch, late of Lunenburg, in the County of Lunenburg and Province of Nova Scotia, Queen's Counsel, Doctor of Civil Law, &c., deceased.

Upon hearing read the affidavit of Wallace Graham and papers herein, and on motion, I do order that the appellants to this Court, Charles Beamish and Henrietta James, have twenty days further time to appeal herein to the Supreme Court of Canada, from the judgment of this Court, dismissing the appeal from the Court of Probate for the County of Lunenburg, and for the perfecting of said appeal in this Court.

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Halifax, 9th January, 1879.

(Signed)

H. W. SMITH

IN THE SUPREME COURT, 1879.

HALIFAX, SS.

In the matter of the proof in solemn form of law of the instrument bearing date on the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, purporting to be the last will and testament of Beamish Murdoch, late of Lunenburg, in the County of Lunenburg, and Province of Nova Scotia, Queen's Counsel, Doctor of Civil Law, &c., deceased.

Upon hearing the judgment of this Court, delivered on the tenth day of December, A. D. 1878, in this matter, dismissing the appeal from the Judge of Probate for the County of Lunenburg, herein to this Court taken by Charles Beamish and Henrietta James, and affirming the decree of said Judge of Probate and the papers herein, and on motion I do order that Charles Beamish and Henrietta James, the appellants in this matter to this Court, have leave to appeal to the Supreme Court of Canada from the said judgment of this Court herein.

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And I do further order that the said Charles Beamish and Henrietta James shall be at liberty, within five days, to pay into this Court, to the credit of this matter, the sum of five hundred dollars, by way of security that they, the said Charles Beamish and Henrietta James, shall and will duly and effectually prosecute their appeal from this Court to the Supreme Court of Canada from the said judgment of this Court herein delivered on the tenth day of December, A. D. 1878, and for the payment of such costs and damages as shall or may be awarded in case the said judgment of the said Supreme Court of Nova Scotia shall be affirmed, which said security is hereby approved of.

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And because the order, which should pass on said judgment was not settled by this Court and signed until on or about the 23rd day of January, 1879, no other terms are imposed.

Halifax, January 25th, 1879.

(Signed)

A. JAMES.

IN THE SUPREME COURT, 1879.

HALIFAX, SS.

In the matter of the proof in solemn form of law of the instrument bearing date on the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, purporting to be the last will and testament of Beamish Murdoch, late of Lunenburg, in the County of Lunenburg and Province of Nova Scotia, Queen's Counsel, Doctor of Civil Law, &c., deceased.

This is to certify that by an order of the Honorable Mr. Justice James, one of the Judges of this Court, made in this matter, dated the twenty-fifth day of January, 1879, it was ordered that Charles Beamish and Henrietta James, therein mentioned, the appellants herein, should be at liberty, within five days from the date thereof, to pay into this Court, to the credit of this matter, the sum of five hundred dollars, by way of security that they, the said Charles Beamish and Henrietta James, would duly prosecute their appeal to the Supreme Court of Canada, from the judgment of this Court herein delivered on the tenth day of December, A. D. 1878, and for the payment of such costs and damages as may be awarded in case the said judgment of the said Supreme Court of Nova Scotia be affirmed, and that the said Charles Beamish and Henrietta James have duly paid into this Court, to the credit of this matter, the said sum of five hundred dollars, and the same now remains in this Court as security as aforesaid

Given under my hand and the seal of the said Supreme Court, this 27th day of January, A. D. 1879.

[L.S.]

(Signed)

M. I. WILKINS,
Prothy.**CERTIFICATE.**

SUPREME COURT, 1878.

HALIFAX, SS.

In the matter of the proof in solemn form of law of the instrument bearing date on the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-five, purporting to be the last will and testament of Beamish Murdoch, late of Lunenburg, in the County of Lunenburg and Province of Nova Scotia, Queen's Counsel, Doctor of Civil Law, &c., deceased.

CHARLES BEAMISH et. al., Appellants.

and

H. A. N. KAULBACK, et. al., Respondents.

J, Martin I. Wilkins, Prothonotary of Her Majesty's Supreme Court at Halifax, in the Province of Nova Scotia, in the Dominion of Canada,

Do hereby certify that hereunto annexed are true and correct copies of the case herein, stated by the parties, pursuant to the Rules of the Supreme Court in that behalf, and the Supreme and Exchequer

Court Act ; including the opinions of the Chief Justice and DesBarres, Smith and James, J. J., and 11040 the orders for extending the time for appeal and allowing the appeal.

And I certify that the Appellant has given proper security by a deposit of five hundred dollars, approved by a Judge of the Supreme Court, a copy of the certificate of which under the Seal of this Court is hereto annexed.

In witness whereof, I have affixed hereto the Seal of Her Majesty's Supreme Court at Halifax, in the Province and Dominion aforesaid, this 19th day of February, A. D., 1879.

M. I. WILKINS,
Prothy.

[L. S.]